

# HOUSE OF LORDS

## Delegated Powers & Regulatory Reform Committee

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3rd Report of Session 2007-08

### **Child Maintenance and Other Payments Bill**

### **Employment Bill [HL]**

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### *The Delegated Powers and Regulatory Reform Committee*

The House of Lords appoints the Committee each session with the terms of reference “to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny; to report on documents and draft orders laid before Parliament under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006; and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments”.

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### *History*

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, paragraph 133). The Committee recommended setting up a delegated powers scrutiny committee which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. After the enactment of the Deregulation and Contracting Out Act 1994, the Committee was given the additional role of scrutinising deregulation proposals under that Act and the Committee became the Select Committee on Delegated Powers and Deregulation. In April 2001, the Regulatory Reform Act 2001 expanded the order-making power to include regulatory reform and the Committee, renamed the Delegated Powers and Regulatory Reform Committee, took on the scrutiny of regulatory reform proposals under that Act. The Committee scrutinises legislative reform orders under the successor to the 2001 Act, the Legislative and Regulatory Reform Act 2006.

# Third Report

## CHILD MAINTENANCE AND OTHER PAYMENTS BILL

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### Introduction

1. Parts 1 to 3 of this bill are concerned with child support maintenance: the bill establishes a Child Maintenance and Enforcement Commission to take over from the Child Support Agency the functions of calculating and enforcing the payment of child support maintenance under the Child Support Act 1991 (“the 1991 Act”) (Part 1); it also transfers those functions to the Commission (Part 2), and confers additional powers of enforcement on the Commission and amends the rules governing the calculation of child support (Part 3). Part 4 is unrelated: it provides for lump sum payments to those who suffer, or the dependants of those who before their death had suffered, from diffuse mesothelioma; and it provides for the recovery of amounts representing such payments, and other payments made to sufferers of asbestos-related diseases or their dependants, from certain compensation payments they receive in respect of such diseases.
2. The Department for Work and Pensions (DWP) has prepared a memorandum for the Committee explaining the delegated powers conferred, or amplified, by the bill, printed at Appendix 1.
3. We wish to comment on the following provisions.

### Objectives and functions of the Commission — clauses 3(2) and 11(2)

4. The main objective of the new Commission is described in clause 2 by reference to ‘children who live apart from one or both of their parents’, and two of the Commission’s principal duties (imposed by clauses 4 and 5) are expressed in relation to such children. Moreover, the Secretary of State has power, by negative regulations under clause 3(2), to confer functions on the Commission in addition to those imposed or transferred by the bill, where he thinks it necessary or expedient to do so in relation to any of the Commission’s objectives. This is a wide power whose scope is defined only by the Commission’s objectives; and its ‘main objective’ is itself susceptible to being supplemented by regulations under clause 11. **If the bill cannot itself limit the range of additional functions which might be conferred by secondary legislation, we consider that the power under clause 3(2) should be subject to affirmative resolution.**

### *Definition of “child living apart from a parent” — clause 11(2)*

5. Clause 11(2) enables the Secretary of State, again by negative regulations, to make provision about when a child is, or is not, to be regarded for any purpose of Part 1 as living apart from a parent. The categories of child to which the Commission’s main objective applies can therefore be adjusted by regulations. In paragraphs 34 and 35 of its memorandum, the department explains that it expects the power to be used for ‘complex cases’ (such as children at boarding school, or with multiple residences) and that the regulations will tend to contain technical details. But it is not clear how the

notion of ‘a child living apart...’ is intended to interact with the notion of a ‘qualifying child’ for whom child support arrangements may be made under the 1991 Act, where that and the related expressions ‘non-resident parent’ and ‘person with care’ are all defined in section 3 of the Act itself, with the power to make regulations confined to the margins of those definitions. While it will undoubtedly be expedient to provide in regulations for less common circumstances and for cases of some complexity, **we consider that this power feeds through to the core of the Commission’s main statutory purpose and so ought to attract the affirmative procedure.**

#### **Fees — clause 6**

6. Clause 6 enables the Secretary of State to make regulations about the charging of fees by the Commission. Subsection (2) particularises the matters about which the regulations may make provision, including who is liable to pay. Section 47(2) of the 1991 Act itself limits the power to require payment of such fees to payment by the non-resident parent, the person with care or (in Scotland) the child concerned and **we consider that this bill should similarly specify who may be made liable to pay any fee charged, although an affirmative power to add to categories specified in the bill would not be inappropriate.**

#### **Monitoring of curfew orders — clause 26 (new section 39O(4))**

7. Clause 26 inserts new sections in the 1991 Act to enable the Commission to apply to a court for a ‘curfew order’, requiring a person to remain at a specified place for specified periods. Extensive provision about curfew orders is made in the primary legislation itself (new sections 39J to 39Q), and the powers in new sections 39R and 39S to make supplementary provision in regulations are subject to affirmative procedure on first exercise. New section 39O (page 26 of the bill) provides for the monitoring of compliance with a curfew order, and it is envisaged that the person responsible for monitoring compliance should be able to exercise some discretion in permitting departure from its strict terms. Subsection (4) enables provision to be made in negative procedure regulations about the nature and duration of absences which may be allowed, notwithstanding the curfew order, and the conditions which may be imposed for the purpose.
8. In paragraph 132 of its memorandum, the department justifies the negative procedure on the ground that the regulations will contain matters of detail. But, in our opinion, a curfew order is a restraint on personal liberty of the same kind as may be imposed under section 37 of the Powers of Criminal Courts (Sentencing) Act 2000, which contains no provision equivalent to that of subsection (4) of new section 39O; so there is no existing provision under the criminal justice regime on which regulations under subsection (4) might be modelled. **We consider that, although the balance of provision for curfew orders between the bill and regulations is appropriate, the first exercise of the power in new section 39O(4) should be subject to the affirmative procedure.**

#### **Transfer of arrears — clause 32 (new section 49A)**

9. Clause 32 inserts a new section 49A into the 1991 Act to enable the Commission to transfer outstanding child maintenance debt to a third party. New section 49A(3)(a) makes provision for regulations specifying the

circumstances in which debt can be transferred. At paragraph 150 of their memorandum, the department says that “it is intended that the permission of the parent with care to whom the debt is ultimately owed will be sought before any debt is sold”. **We consider that a limitation by reference to such permission should appear on the face of the bill unless the Government can satisfy the House that the power is justified in its present unrestricted terms.**

10. New section 49A(4)(b) further enables the Secretary of State, by regulations subject to the negative procedure, to allow the Commission to prevent the collection of debt by the purchaser in circumstances specified in the regulations. Paragraph 151 of the memorandum explains that the regulations “will provide for a company to cease enforcement action if the safety or welfare of the parent with care or relevant child was at risk.” **We draw this power to the attention of the House because it could potentially be exercised in a way which might allow the Commission to prevent a third party who had bought outstanding child maintenance debt from collecting that debt.**

#### **Pilot schemes — clause 38**

11. Clause 38 introduces a new section 51A into the 1991 Act to enable provision made in any regulations made under that Act to be ‘piloted’ in particular areas or for particular categories of persons, including those selected on a sampling basis. The provision made here is almost identical to that made by section 28 of the Child Support, Pensions and Social Security Act 2000, save that the power there was narrower, being confined only to the ‘piloting’ of changes made to the 1991 Act by the 2000 Act. The power in section 28 is exercisable subject to affirmative procedure, and in its memorandum to the Committee in 2000, the department (then DSS) observed that the affirmative procedure was appropriate given the novel nature of the provision which might be made in exercise of the power. The power in section 28 (which is to be repealed by the bill) is not yet in force and so its exercise remains ‘novel’. The memorandum on this occasion does not refer to the power conferred by new section 51A, so there is no explanation for the department’s apparent change of view. **We consider that the affirmative procedure remains appropriate for the introduction of pilot schemes.**

#### **Mesothelioma: lump sum payments: conditions of entitlement — clause 44**

12. Clause 43 provides for lump sum payments to be made to a person suffering from diffuse mesothelioma, or to the dependant of such a person who has died. Unlike the provision for lump sum payments in similar cases of asbestosis-related illness or death under the Pneumoconiosis (Workers’ Compensation) Act 1979 (“the 1979 Act”), there is no requirement for the sufferer to have established entitlement to industrial injuries disablement benefit in relation to the disease (on the footing that it is work-related). The amounts of the payments under clause 43 are to be prescribed in regulations subject (as under the 1979 Act) to the affirmative procedure. However, while the conditions of entitlement to a payment are provided for in clause 44, it is apparent that, of the three entitlement conditions which apply to sufferers (subsection (1)) and their dependants (subsection (2)), the second and third

are in each case entirely dependent on regulations, and the first can be supplemented by regulations under subsections (3)(e) and (4)(d).

13. Although it is the case (as stated in paragraph 173 of the memorandum) that most regulations to be made under the 1979 Act are subject to negative procedure, the 1979 Act itself sets out the conditions of entitlement as respects both sufferers and dependants, whereas clause 44 leaves much to regulations. **In view of the change of balance here between the bill and regulations, we consider that the first exercise of the powers in clause 44 to make regulations should be subject to affirmative resolution.**

#### **Consequential provision — clause 54**

14. Clause 54(2)(a) confers a Henry VIII power to amend or repeal primary legislation by negative regulations in consequence of provision in the bill. In paragraph 194 of its memorandum, the department suggests that the negative procedure is appropriate in this instance ‘because it reflects the general practice for such clauses’, and it cites section 319(2) of the Pensions Act 2004 as a precedent. In fact, the exercise of that power is (by virtue of section 316(2)(q) of that Act) subject to affirmative procedure. Nevertheless, the power here is confined to making consequential amendments – it does not extend to incidental or supplemental amendments in Acts, where the House would usually expect to have the opportunity to approve the provision in question. There is however a precedent for the negative procedure for a similar power in section 27 of the Welfare Reform Act 2007, which we found acceptable (5th Report, Session 2006-07, paragraph 37) and we are satisfied that the negative procedure is not inappropriate in the present case.

#### **EMPLOYMENT BILL [HL]**

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15. A memorandum from the Department for Business, Enterprise and Regulatory Reform, printed at Appendix 2, explains the delegated powers in this bill: at clauses 3(2) (new section 207A(6)), 9(1) (new section 19A(6)) and 20. Clause 4 imposes a limit on an existing power. There is nothing in any of the delegations which we wish to draw to the attention of the House.

## APPENDIX 1: CHILD MAINTENANCE AND OTHER PAYMENTS BILL

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### Memorandum by the Department for Work and Pensions

#### Introduction

1. This memorandum sets out the delegated powers conferred by the Child Maintenance and Other Payments Bill. It explains in each case the purpose of the power; the reason why it is left to delegated legislation; whether the power is subject to Parliamentary scrutiny and, if so, what procedure applies; and the reason for that procedure.
2. The Department has followed the precedent set out in current legislation relating to child support by setting out the legislative framework in the Bill and making provision for secondary legislation to set out the detail. Current child support legislation set out in the Child Support Act 1991 as amended by the Child Support Act 1995 and the Child Support, Pensions and Social Security Act 2000 uses this framework of primary and secondary powers. Regulations which set out the details of child support – for example, the types of cases which can be defined as ‘special cases’ permitting a change from the standard calculation formula – are often subject to amendment as socio-economic and individual case circumstances change. A degree of flexibility in amending the provisions around child support is therefore required.
3. The Committee should note that the Bill establishes a new non-departmental public body, the Child Maintenance and Enforcement Commission. This body will work with the Secretary of State on child maintenance policy, and will make recommendations to the Secretary of State as to the content of regulations made under the powers granted in this Bill. However, all regulation making powers will be retained by the Secretary of State.

#### Structure and purpose of the Bill

4. The December 2006 White Paper *A New System of Child Maintenance* set out the Government’s proposals to establish a new and radically different organisation to administer child maintenance. The new arrangements are underpinned by a change in approach that encourages parents to take responsibility for supporting their children financially but is backed up by a tough enforcement regime for cases where this does not happen. An important element of this approach is that the requirement that parents with care in receipt of income related benefits be automatically treated as having applied to the statutory scheme for a maintenance arrangement is removed. Further, the White Paper recommended that the statutory scheme of child support maintenance be administered by a new non-departmental public body run by an independent board as a replacement to the existing Child Support Agency. This Bill seeks to implement many of the proposals set out in the White Paper.
5. The Bill also includes a part introducing a new scheme similar to the Pneumoconiosis etc (Workers’ Compensation) Act 1979 which makes a lump sum compensation payment to all people suffering from mesothelioma. Mesothelioma is a cancer of the lining of the lungs or digestive system, associated almost exclusively with asbestos. The Government proposes to fund the new scheme by recovering compensation payments from any later award of civil compensation in respect of the 1979 Act and new scheme payments. This would mean that people who have been exposed to asbestos, but who are unlikely to

receive either civil compensation or a lump sum under the 1979 Act, would be able to receive a payment.

6. The Bill contains 60 clauses and 8 schedules and is structured as follows:
  - Part 1 (Clauses 1 - 11) – The Child Maintenance and Enforcement Commission
  - Part 2 (Clauses 12 - 14) – Transfer of Child Support Functions etc to the Commission
  - Part 3 (Clauses 15 - 42) – Child Support etc.
  - Part 4 (Clauses 43 - 51) – Lump sum payments: Mesothelioma etc.
  - Part 5 (Clauses 52 – 60) General
  - Schedules 1- 8

### **Part 1 The Child Maintenance and Enforcement Commission**

7. Part 1 of the Bill establishes the Child Maintenance and Enforcement Commission ('the Commission').
8. The Commission will be a non-departmental public body. The main objective of the Commission is to ensure that as many parents as possible have effective maintenance arrangements in place. The Commission is required to promote awareness of the need to make and adhere to appropriate child maintenance arrangements, and to provide information and guidance to parents to help them secure such arrangements, either privately or through the statutory scheme.

### **Part 2 Transfer of Child Support Functions etc to the Commission**

9. Part 2 of the Bill transfers the majority of the Secretary of State's existing functions under the 1991 Act to the Commission. People employed by the Child Support Agency are transferred to the Commission under the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

### **Part 3 Child Support etc.**

10. Part 3 of the Bill makes amendments and additions to existing child support legislation.
11. The requirement that parents with care in receipt of certain benefits are treated as having applied for child maintenance is repealed, together with the Secretary of State's ability to reduce the amount of a parent with care's benefit if they opt out of having their claim for benefit treated as an application for child maintenance without good cause.
12. Part 3 of the Bill makes changes to the way in which a maintenance liability is calculated, collected and enforced.
  - The basic financial information used in calculating a non-resident parent's liability is changed from current net income to gross income for the latest available tax year. This information will be taken directly from data held by Her Majesty's Revenue and Customs.
  - The collection and enforcement powers used to ensure compliance with the statutory scheme are increased. Provision is made for the Commission to make orders deducting money from current accounts



and lump sums held by a non-compliant non-resident parent. As a final measure, the Commission is able to make orders disqualifying a person from holding a travel authorisation document, and to apply to court to for a curfew order.

- New powers are given allowing the Commission to deal with the large sums of child maintenance debt which has built up. These include the ability to negotiate part payment of a debt in lieu of full payment, and the power to recover debt from a deceased non-resident parent's estate.
13. Part 3 also provides for the movement of existing cases to the new maintenance calculation rules, and sets out the basic process by which cases will be moved. However, the detail of this process will be set out in regulations. Provision around the transition of cases from the two existing child support schemes to that set out in this Bill is an especially clear example of the need for flexible secondary powers as the details will need to be worked out in the light of experience.

#### **Part 4 Lump sum payments: Mesothelioma etc.**

14. Part 4 of the Bill introduces a new scheme similar to the Pneumoconiosis etc (Workers' Compensation) Act 1979, allowing a lump sum payment to be made to certain persons suffering from mesothelioma. Part 4 also inserts a new section into the Social Security (Recovery of Benefits) Act 1997 to introduce the ability to recover payments made under the 1979 Act or the new scheme where a person then goes on to receive compensation in a civil claim.

#### **Part 5 General**

15. Part 5 of the Bill contains miscellaneous and general provisions, such as the territorial extent of the Bill, its commencement dates, and the consequential and minor amendments it entails.

#### **Territorial Extent**

16. The Bill extends to England, Wales and Scotland. The following clauses and schedules also apply to Northern Ireland:
- Clauses 52, 54(2), 59 and 60;
  - Paragraphs 4 to 6 of Schedule 6, and clause 41 so far as relating to those paragraphs.

#### **Parliamentary Scrutiny**

17. The Department has considered in each case the appropriate procedure to follow in making statutory instruments.
18. Clauses containing regulation making powers which will produce regulations subject to the affirmative procedure are listed below. In some cases, the bill clauses insert new sections into the 1991 Act. Where this is done, Parliamentary procedure is governed by section 52 of that Act. Amendments to section 52 are found at paragraphs 1(12) and 1(13) of Schedule 7.
- Clause 6(1) and (4)
  - Clause 22 (new section 32D(2)(b))
  - Clause 31 (new section 41E(1)(a))
  - Clause 43

19. The following clauses contain regulation making powers which will be subject to the affirmative procedure in the first instance only:

- Clause 17 (amending section 17)
- Clause 25 (new sections 39D(3), 39E(3), 39I)
- Clause 26 (new section 39R, 39S)
- Clause 30 (new section 41D (2))
- Clause 31 (new section 41E(2))
- Clause 32 (new section 49A)
- Schedule 4 paragraphs 5, 8(4) and 9(2)

A full list of all delegated powers set out in this Bill is given at annex A to this memorandum.

20. The Committee may also wish to note that, other than regulations made within six months of the primary provisions coming into force, the Department is required to submit social security regulations to the Social Security Advisory Committee for scrutiny and comment. Regulations made under the Social Security (Recovery of Benefits) Act 1997 as amended by clause 51 of this Bill would fall within this requirement and would be subject to scrutiny from the Social Security Advisor Committee.

### **Analysis of delegated powers by clause**

#### **Part 1 – The Child Maintenance and Enforcement Commission**

21. Part 1 establishes the Child Maintenance and Enforcement Commission ('the Commission') as a legal entity, and sets out the functions and objectives of the Commission. The Commission will be a non-departmental public body.

#### **Clause 3 – Functions of the Commission: general**

22. Clause 3(2) allows the Secretary of State to make regulations giving the Commission any additional functions the Secretary of State considers are necessary or expedient in relation to its objectives. The key objective of the Commission is to 'maximise the number of children who live apart from one or both of their parents for whom effective maintenance arrangements are in place'; this is supported by the subsidiary objectives of encouraging and supporting voluntary maintenance arrangements (e.g. arrangements which parents have come to between themselves, which do not rely on either the statutory scheme or the courts), and, where necessary, setting up, and securing compliance with, maintenance agreements under the statutory scheme. These objectives involve some complex issues, and there are some areas where parental behaviour will be uncertain. As a statutory body, the Commission will only have the functions conferred by legislation. As the evidence base for the most effective ways for the Commission to realise its objectives develops, it may be necessary to add further function.
23. Any additional functions given to the Commission under this power are restricted solely to those which relate to the objectives set out on the face of this Bill. For this reason this power is subject to negative resolution.

24. Similar provisions enabling the Secretary of State to confer additional functions on a body can be found in e.g. section 116(2) of the Education and Inspections Act 2006.

#### **Clause 6 – Fees**

25. Clause 6 provides for a regulation making power allowing the Commission to charge a fee for its functions in certain circumstances. This replaces section 47 of the 1991 Act.
26. Subsection (1) gives the Secretary of State the power to make regulations providing for the Commission to charge for its functions. The regulation making powers given to the Secretary of State have been broadly drawn to allow for development of the charging structure over time and as the nature of the Commission's services evolve. This is especially true given that the Commission is likely to need to introduce fees at different times for new and existing clients.
27. Subsection (2) sets out a non-exhaustive list of matters that may be covered by regulations made under section (1). These include when a fee may be charged; how much may be charged; and who will be charged (at paragraphs (a), (b) and (d) respectively). As the nature of the charging regime itself may well change over time as the Commission develops its services around information and guidance provision, these regulation making powers need to be drawn widely. Subsection (2)(c) provides for the regulations to make provisions for the supply of information necessary to calculate the amount payable in fees. Information could include, for example, the benefit status of the parent with care, as it may not be appropriate to charge parents with care who are in receipt of benefits.
28. Subsection (2)(e) provides for the regulations to make provision determining when any fee charged is payable. Section (2)(f) provides for the regulations to make provision for the recovery of fees. The charging regime operated by the Child Support Agency in the early 1990s was not complied with in all cases, and subsection (2)(e) and (f) are intended to ensure that this problem does not repeat itself. However, outstanding fees will not be pursued to the detriment of child maintenance liabilities themselves. Subsection (2)(g) enables regulations to make provision for the waiver, reduction or repayment of fees if necessary.
29. Subsection (3) ensures that the regulations setting out a charging regime may make provision for the charging of fees which are not related to the actual costs incurred by the Commission.
30. Subsection (4) allows the Secretary of State to make regulations providing that measures used for the collection and the enforcement of maintenance shall apply equally to the collection and enforcement of fees. This will enable the Commission to enforce the payment of fees through the use of measures such as deduction from earnings orders or liability orders. However, it is not intended that the Commission will be able to use those enforcement powers which are compliance tools, such as the ability to remove passports or committal to prison, to collect arrears of fees alone.
31. Subsection (5) gives the Secretary of State the power to make regulations to give the right of appeal against certain decisions of the Commission around the charging of fees as set out in the regulations made under subsection (1). Such an appeal would be made to an appeal tribunal, and could only be brought by someone affected by the Commission's decisions around fees – generally, the parent with care or non-resident parent. Subsection (6) makes provisions for the relevant subsections of section 20 (appeals to appeal tribunals) of the 1991 Act to

also apply to appeals against a decision by the Commission concerning fees. A power to provide for appeals by regulations is needed here because there may be elements of discretion for the Commission in the fees regime established under regulations under subsection (1).

32. Given the scope and sensitivity around charging, and to ensure that opportunity is provided for Parliamentary scrutiny, regulations made under subsections 6(1) and (4), which provide for the charging of fees by the Commission, are subject to affirmative resolution. It is appropriate for regulations under 6(5) to be subject to negative resolution, in line with appeals regulations in other social security legislation.

#### **Clause 7 - Agency arrangements and provision of services**

33. Clause 7 allows for the Commission to enter into arrangements with government bodies and other public bodies. Subsection (4)(b) provides for the Secretary of State to make regulations specifying the public bodies with which the Commission can enter into such an arrangement.
34. Arrangements between government bodies and other public bodies for the provision of services are not uncommon. The service remains within the public sector, and impact on clients would be minimal. This power is therefore subject to negative resolution.

#### **Clause 11 - Supplementary provisions**

35. Clause 11 makes supplementary provisions around the objectives and functions of the Commission.
36. Subsection (2) allows for the Secretary of State to define in regulations whether a child is, or is not, to be regarded as living apart from a parent for the purposes of Part 1 of the Bill. It is intended that this power will cover complex cases where common understanding of a child's status as living with, or apart from, a parent might be inadequate - for example, where a child resides at a boarding school for a large proportion of the year, or has three or more residences. A regulation making power is needed here to cover the detail and complexity of some cases.
37. The regulations will be used to set out technical details of how the Bill applies in unusual cases. Negative resolution is therefore considered appropriate.

#### **Part 2 – Transfer of Child Support Functions etc to the Commission**

38. Part 2 of the Bill transfers the functions, rights, liabilities and property of the Secretary of State relating to child maintenance to the Commission, as well as Child Support Agency employees.

#### **Clause 13 - Transfer of employees**

39. Clause 13 provides that the transfer of functions to the Commission is to be treated as a transfer of an undertaking for the purposes of the Transfer of Undertakings (Protection of Earnings) Regulations 2006 (TUPE).
40. Subsection (5) allows the Secretary of State to make regulations disapplying the general provisions in the case of specified persons or categories of persons. This will ensure that only those people who it is intended will transfer to the Commission will be caught by the provision. For example, it will ensure that private contractors who are carrying out functions which are to be transferred to the Commission will not automatically become employees of the Commission.

41. The power is subject to negative resolution. This is considered appropriate as the power has been taken for a specific purpose, and will only be exercised in a limited way.

#### **Clause 14 – Transfer of property, rights and liabilities**

42. Clause 14 enables the Secretary of State to make one or more schemes to transfer property, rights and liabilities to which the Secretary of State is entitled or subject, in connection with the transferred functions, over to the Commission. Such a transfer scheme may provide for the transfer of property, rights and liabilities that it would not otherwise be possible to transfer - for example, a contract which does not contain a clause allowing it to be assigned. It also allows the Secretary of State to create interests in or rights over property transferred or retained by virtue of the scheme e.g. to enable property transferred to the Commission to continue to be used by the Secretary of State. It also allows the Secretary of State to create rights and liabilities between the Secretary of State and the Commission: for example, if a contract was transferred to the Commission, the scheme could allow for the Commission to be indemnified by the Secretary of State in respect of previous breaches.
43. The schemes provided for under clause 14 are not made by statutory instrument; therefore, they are not subject to Parliamentary procedure. This is not unusual and is considered an appropriate way of dealing with the necessary mechanics of the transfer of the system from the Secretary of State to the new body. There is similar provision in section 41 of the Food Standards Act 1999 (c.28) for schemes to be made for the transfer of Secretary of State property, etc to the Food Standards Agency and, as with clause 14, schemes made under these powers are not made by statutory instrument and thus are not subject to parliamentary procedure.

#### **Part 3 – Child Support etc.**

44. Part 3 of the Bill sets out new and amended provisions around child support maintenance policy. It amends the process by which a maintenance liability is calculated, and develops the enforcement powers which can be used to collect arrears of child maintenance. It also makes provision for the handling of existing child maintenance arrears.

#### ***Maintenance calculations***

##### **Clause 16 – Changes to the calculation of maintenance**

45. Clause 16 provides for Schedule 4 to come into effect. Schedule 4 makes changes to the provisions about the calculation of maintenance.
46. While clause 16 does not of itself contain delegated powers, Schedule 4 does contain a number of delegated powers. These are dealt with below at paragraph 57.

##### **Clause 17 – Power to regulate supersession**

47. A maintenance liability can be increased or decreased if the circumstances under which the calculation or assessment upon which the liability was based change. This change is referred to as a supersession. Currently, a very small change in circumstances, for example a minor change in the non-resident parent's income, can trigger a supersession. It is intended that such small changes will not in future

be enough for a supersession to be actioned immediately; rather, an annual fixed term award will be made which will be updated each year to take account of any changes in circumstances which may have occurred during the preceding year. Certain significant changes in circumstances, such as a substantial increase/decrease in income or the birth/death of a qualifying child, will still trigger an immediate supersession during the 12 months between fixed term awards.

48. This clause expands upon the provision which already exists in the current section 17(3) of the 1991 Act that the Secretary of State may by regulations set out the cases and circumstances in which, and the process by which, a supersession may be made.
49. New section 17(2) gives the Secretary of State the general power to make regulations circumscribing the use of the power to make supersessions. It is intended that this will have the effect of setting up a system of one year fixed term awards with limited power to supersede at other times. This is best achieved by regulations as a maintenance liability is an ongoing responsibility with no fixed end point. Regulations will be used to provide for the existing liability to be superseded if certain circumstances apply, one of which will be that the non-resident parent's tax year data has been updated.
50. New section 17(3)(a) allows the Secretary of State to define the circumstances in which an immediate supersession will continue to be permitted. It is intended that these circumstances will include: the end of the fixed-term annual period; a 25% increase/decrease in the non-resident parent's income; a change in non-resident parent status from unemployed to employed or vice versa; and the birth/death of a qualifying child. New section 17(3)(b) is concerned with cases in which a request for a supersession has been rejected by the Commission because the change is outside of the circumstances in which immediate supersession is allowed. If a further supersession is then applied for and permitted by the Commission, the regulations may allow the Commission to consider whether to take account of the earlier change of circumstances in recalculating the maintenance award.
51. New section 17(3)(c) allows the Secretary of State to set out in regulations the practicalities of the process by which a supersession may be dealt with. This will allow the Secretary of State to define the procedures by which a supersession may be sought, considered and implemented.
52. As the regulations under these provisions will be making new rules for the adjustment of maintenance calculations it is right that parliament should debate them. Therefore the first set of regulations which make provision as described in 17(3)(a) and (b) are subject to affirmative resolution. However the existing regulations under section 17 are negative (and the same applies to the analogous regulations in social security legislation). Therefore subsequent use of the power will be subject to negative resolution.

#### **Clause 18 – Transfer of cases to new rules**

53. Clause 18 provides for Schedule 5 to come into effect. Schedule 5 makes provision for, and in connection with, the movement of existing cases either into voluntary arrangements or onto the new calculation rules.
54. While clause 18 does not of itself contain delegated powers, Schedule 5 does contain a number of delegated powers. These are dealt with below at paragraph 58.

### *Collection and enforcement*

#### **Clause 19 - Use of deduction from earnings orders as basic method of payment**

55. Clause 19 clarifies that regulations made under the regulation making power in section 29 of the current 1991 Act may include provisions for payment by deduction from earnings orders as an initial means of maintenance collection. The section provides clear safeguards around the use of deduction from earnings orders in this way. Subsection (4)(a) provides that if regulations include provision for a deduction from earnings order to be used as a basic method of payment, these regulations must specify that this method can only be used in this way if no good reason exists as to why it should not be so used. Subsection (4)(b) provides that such regulations must also give the person against whom a deduction from earnings order was made the right to appeal to a magistrates' court, or, in Scotland, the sheriff, against the decision that there was no good reason not to use it. Subsection (5) prevents the magistrates' court or sheriff from questioning the original calculation of child maintenance liability upon which the deduction from earnings order is based.
56. Subsection (6)(a) provides for the regulations to set a clear time period within which an appeal may be brought against a decision that good reason not to use a deduction from earnings order as a basic method of payment does not exist. The existing Child Support (Collection and Enforcement) Regulations 1992, regulation 22(2)(b) states that any appeal made to a magistrates' court or sheriff against a deduction from earnings order must be made within 28 days. Subsection (6)(b) provides for the regulations to define the powers of the magistrates' court or sheriff in respect of such an appeal. This is similar to the existing powers to make regulations providing for the powers of the magistrates' court or sheriff in relation to appeals against deduction from earnings orders in section 32(7) of the 1991 Child Support Act.
57. Subsection (7)(a) provides that where such regulations are made, provision may be made setting out matters which are, or are not, to be taken into account in determining whether there is good reason not to use a deduction from earnings order as a basic method of collection. Subsection (7)(b) allows for the regulations to set out circumstances where there would, and would not, be good reason not to apply a deduction from earnings order. The details to be set out in such regulations will be subject to research and piloting.
58. The regulations made under the regulation making powers in this clause will be subject to negative resolution. Regulations made under this clause are required to include safeguards in relation to the Commission's ability to use deduction from earnings orders as the initial means of collection, and are therefore suitable for negative resolution.

#### **Clause 20 – Deduction from earnings orders: the liable person's earnings**

59. Clause 20 inserts a definition of 'earnings in the Child Support Act 1991 and gives the Secretary of State power to make exceptions to this definition. This replaces a wider existing regulation-making power in section 31(8) of the 1991 Act to define "earnings" through regulations. The definition set out in new subsection (8) includes (a) wages or salary; (b) pensions; (c) certain periodical payments by way of compensation; and (d) statutory sick pay. Regulations may therefore be made creating exceptions to these categories.

60. The regulations made under the regulation making powers in the clause will be subject to negative resolution as the exceptions are likely to be the same as or similar to existing exceptions set out in the existing legislation.

### **Clause 21 – Current account deduction orders**

61. Note: The clause makes frequent reference to ‘the deposit-taker’. This is the institution with which the current account is held – for example, Barclays Bank. A ‘deposit-taker’ is defined as a person who, in the course of business, may lawfully accept deposits in the UK. The term ‘current account’ has the meaning commonly accepted, but for these purposes an order cannot be made in relation to business accounts or joint accounts.
62. Clause 21 inserts new sections 32A, 32B and 32C into the 1991 Act. This gives the Commission the power to make an order requiring a deposit-taker to deduct money from a current account held by a non-compliant non-resident parent. Such provisions are necessarily complex, and regulations will set out the details relating to this power.
63. New section 32B sets out the regulation making powers for the practical implementation of current account deduction orders. These powers are similar to the existing powers to make regulations in relation to deduction from earnings orders in section 32 of the 1991 Act. As with the provisions around deduction from earnings orders, primary powers are used to set out the basic principles under which current account deduction orders operate; secondary legislation is used to set out the detail around these orders. Many of the powers relate to safeguards on the Commission’s use of current account deduction orders.
64. New section 32B(1) gives the Secretary of State the power to make regulations regarding current account deduction orders. New section 32B(2) sets out specific areas in which regulations may in particular be made.
65. New sections 32B(2)(a) to (c) are concerned with the information to be set out in the order itself. New section 32B(2)(a) provides that the regulations may require an order to state the amount(s) for which it is made; this can include both arrears of maintenance and ongoing maintenance liability. New section 32B(2)(b) provides that the regulations may require the amounts which are to be deducted to meet the outstanding liabilities of child maintenance to be set out in the order. The non-resident parent should therefore be aware of both the total amount due, and how it is made up, and the regular amounts to be deducted. New section 32B(2)(c) allows the regulations to require that the dates upon which money is to be deducted from the account are stated in the order.
66. New section 32B(2)(d) is concerned with ensuring that the amount deducted from any one current account does not exceed a certain amount. It allows the regulations to set a clear level which no deduction under the order should exceed. The section is a safeguard to ensure that the subject of the order or a third party is not left in a financially vulnerable position. The level set is likely to be linked to a percentage of the non-resident parent’s assessable income.
67. New section 32B(2)(e) provides for the regulations to set out the circumstances in which amounts in a person’s current account can be disregarded for the purposes of a current account deduction order. An example of such an amount could be where the non-resident parent is not beneficially entitled to a sum of money – i.e. if some or all of the money in the account does not actually belong to the non-resident parent themselves, but rather to a third party.



68. New section 32B(2)(f) gives the power for the regulations to set out the manner in which monies will be paid over to the Commission. This will ensure that the payment of monies is carried out according to a standard process.
69. New section 32B(2)(g) is concerned with administrative charges around current account deduction orders. It allows for regulations permitting the deposit-taker itself to deduct an additional sum towards the costs incurred in administering the order; the section also provides for this additional sum to be specified in regulations. Allowing a company to deduct this charge is intended to assist in meeting the costs incurred in levelling the order, which will clearly have a unit cost to the company. An employer can currently charge £1 per transaction for the cost of administering a deduction from earnings order, although this figure may be adjusted in line with inflation. The Department will consult with the financial services industry, the Financial Services Authority and employers before setting a figure for the administrative costs deductible around current account deduction orders and/or increasing those for deduction from earnings orders.
70. New section 32B(2)(h) provides for the regulations to make provision for notifications of amounts deducted and paid to be given to the person against whom the order is made.
71. New section 32B(2)(i) gives the power to make regulations placing a requirement on the deposit-taker to notify the Commission if the account specified in the order does not in fact exist at the time the order is served (new section 32B(2)(i)(a)), and if the non-resident parent has any other accounts with the deposit-taker at that time (new section 32B(2)(i)(b)). It also provides for the manner in which this notification must be made, and the time period which the deposit-taker has to notify the Commission, to be specified. This time period will be set after further discussion with the financial services industry. The provision will help to ensure that any other monies held by the non-resident parent can be traced and if necessary a current account deduction order can be made against them instead/as well.
72. New section 32B(2)(j) similarly gives the power to make regulations requiring the deposit-taker to inform the Commission if the current account named in the order is closed (new section 32B(2)(j)(i)), or if a new account is opened (new section 32B(2)(j)(ii)). The section also provides for the manner in which this notification must be made, and the time period which the deposit-taker has to notify the Commission, to be specified. This time period will be set after further discussion with the financial services industry. New section 32B(2)(j) will help to mitigate against attempts by the non-resident parent to avoid the order by closing the specified current account down.
73. New section 32B(2)(k) to (m) is concerned with reviews and variations of orders. New section 32B(2)(k) provides for the circumstances in which an application for a review can be made to be defined in regulations. New section 32B(2)(k) also provides for regulations dealing with the review itself. It is intended that the non-resident parent upon whom the order has been made will be able to request a review of the order in the event of their circumstances changing or if they might suffer hardship. New section 32B(2)(l) gives the power to make regulations allowing for the variation of a current account deduction order. An order will thus be able to take account of any special circumstances raised by an individual case, even after it has been made. It is intended that all interested parties will be able to apply for a variation, and that such an application may involve an increase or decrease in the amount for which the order was originally made.

74. New section 32B(2)(m) allows the regulations to make similar provision with regard to any variation of a current account deduction order to the provision made at new section 32A(7). The consequence of such a provision would be that any variation made to an order must be implemented by the deposit-taker; however, the deposit-taker would not be liable for non-compliance with the variation within the seven day period beginning from the date the variation is served on them. This provision is intended to ensure that a deposit-taker must comply with the Commission's request for an order to be varied, while allowing them sufficient time to organise and implement a variation
75. New section 32B(2)(n) and (o) makes provision for regulations in relation to the lapse, revival and discharge of orders. New section 32B(2)(n) provides for the regulations to allow an order to lapse in certain circumstances, and gives the power to define in the regulations what these circumstances would be. New section 32B(2)(o) gives the Secretary of State the power to make regulations defining the circumstances in which an order will be revived. It is intended that these regulations will cover such circumstances as the non-resident parent making an arrangement to pay via another method and then defaulting on this new arrangement. The order would lapse when the arrangement to pay via another method was agreed, and would be revived if the arrangement then failed.
76. New section 32B(2)(p) provides for regulations allowing or requiring an order to be discharged. It is intended that an order will be discharged if the amount due has been paid. Section 32B(2)(q) allows regulations to require that the Commission notify the deposit-taker if an order has lapsed or ceased to have effect. This will act as a safeguard to ensure that further sums are not deducted by the deposit-taker after the order has lapsed or ceased to have effect.
77. New section 32B(3) gives the Secretary of State the power to make regulations setting out the priority between (a) other current account deduction orders; (b) orders under any other enactment in England or Wales; and (c) any diligence in Scotland. Such other orders or diligence must obviously have been made against the same current account.
78. New section 32B(4) gives the Secretary of State the power to make regulations giving the right of appeal against a current account deduction order. An appeal will have to be made to a magistrates' court or, in Scotland, the sheriff. An appeal may be made against the making of the order, or against the Commission's decision on an application to review the order. New section 32B(5) prevents a magistrates' court or sheriff from questioning the original maintenance calculation underlying the deduction order. This will ensure that the remit of the magistrates' court or sheriff in this instance is limited to the current account deduction order itself. Section 32B(6) sets out two specific areas in which the Secretary of State has the power to make regulations in relation to appeals against current account deduction orders to a magistrates' court or sheriff. These are concerned with the time period in which a right of appeal may be exercised and the powers of the court with respect to an appeal. It is likely that a person will have 28 days in which to appeal.
79. New section 32C deals with failure to comply with requirements around current account deduction orders. New section 32C(1)(b) states that failure to comply with any regulation made under section 32B in relation to current account deduction orders is an offence if that regulation has itself been designated in regulations for the purposes of this section. It is intended that regulations which impose obligations in relation to current account deduction orders will be so designated. A deposit-taker could thus be charged with an offence if they failed to

implement an order correctly, or in other ways failed to comply with the regulations. It is intended that this will ensure that deposit-takers comply with all provisions made around current account deduction orders.

80. Regulations made under these powers will be subject to negative resolution. Regulation making powers in this area are very similar to the existing regulation powers around deduction from earnings orders set out in section 32 of the current 1991 Act, which are subject to negative resolution.

#### **Clause 22 – Lump sum deduction orders**

81. Note: The clause uses the term ‘third party’ to describe the person or organisation which holds the lump sum. A third party is a person who holds money of a prescribed description which is due or accruing to a person. A deposit-taker is therefore classified as within the meaning of ‘third party’ for the purposes of this clause. However, a lump sum deduction order cannot be placed on a current account, a joint account or a business account.
82. Clause 22 inserts new sections 32D, 32E, 32F, 32G and 32H into the 1991 Act. These give the Commission the power to make an order requiring a third party to deduct a lump sum from monies held on behalf of a non-compliant non-resident parent. Provisions around such an order are necessarily complex, and regulations set out the details relating to this power.
83. New section 32D sets out provisions for interim lump sum deductions orders.
84. New section 32D(2)(b) provides for regulations to prescribe the kinds of amounts due or accruing to the non-resident parent, aside from amounts held in accounts with deposit-takers, in relation to which an interim lump sum deduction order, and therefore a final lump sum deduction order, can be made.
85. An interim lump sum deduction order will precede the final order, and have the effect of preventing the third party from doing anything which would reduce the amount being held below that stated in the order while it is in place. This is done in order to allow the Commission to seek representations in relation to the final lump sum deduction order without risking the loss of the asset. New section 32D(5) gives the power to make regulations setting out exceptions to this requirement not to reduce the lump sum
86. New section 32D(9) states that an interim lump sum deduction order will cease to have effect either: (a) when the period prescribed by the Secretary of State ends; (b) when the interim order lapses or is discharged; or (c) when a final order is made, whichever is the earliest.
87. New section 32E sets out the provisions relating to final lump sum deduction orders. A final lump sum deduction order may be made following an interim order if the Commission decides that this is appropriate, and will have the effect of requiring the third party to pay the amount held over to the Commission once the relevant period has ended.
88. New section 32E(1)(b) allows for the Secretary of State to make regulations setting out the period of time within which representations regarding the making of an interim lump sum deduction order may be made. When this period ends, a final order may be made. The third party is required not to reduce the amount held below that stated in the order, until the relevant period has passed. New section 32E(8) gives a similar regulation making power with respect to final orders that are set out at new section 32D(5) with respect to interim orders,

- providing a power to make regulations setting out exceptions to the requirement not to reduce the amount below that stated.
89. Once the period between the serving of the final order and the last date for making an appeal against the final order has passed, the third party is required to pay the Commission either the amount specified in the order or, if the amount held is less, the entire amount held by the third party. If an appeal is made, the third party will not be required to pay any money over to the Commission until after the appeal has been determined and any further appeal period has passed.
  90. New section 32F is concerned with the continuing effect of final lump sum deduction orders if some of the amount due specified in the order remains unpaid even after a lump sum has been paid by the third party. The third party continues to be required to pay over any monies to the credit of the non-resident parent until the amount specified in the order had been paid. In addition, the third party is required not to do anything which would reduce any amount held. New section 32F(3) allows regulations to be made setting out exceptions to the requirement not to reduce the amount.
  91. New section 32F(4)(c) gives the Secretary of State the power to make regulations defining events or circumstances which would mean that a final order would cease to have effect where the amount due had not yet been paid off, or the order had not otherwise lapsed or been discharged. It is intended that these events or circumstances would include the parent with care's request that the Commission should no longer seek to enforce the debt. The power can also be used to provide the Commission with a means of closing down a partially unpaid order if a more appropriate method of enforcement emerges for that particular case.
  92. New section 32G sets out the regulation making powers around both interim lump sum deduction orders and final lump sum deduction orders. These powers are similar to some extent to the existing regulation making powers around deduction from earnings orders granted under section 32 of the current 1991 Act.
  93. New section 32G(1) gives the Secretary of State the power to make regulations regarding both interim lump sum deduction orders and final lump sum deduction orders. New section 32G(2) specifies some of the areas in relation to which the regulations may particularly be made.
  94. New section 32G(2)(a) allows for the regulations to set out the conditions which are to be disregarded when determining amounts to which section 32D (2) applies – for example, disregarding the need to give 90 days notice when withdrawing funds. It is intended that these regulations will provide a means of determining whether amounts are due or accruing to the non-resident parent from a third party. New section 32G(2)(b) allows for the regulations to set out the way in which money deducted under a final lump sum deduction order is to be paid to the Commission. This will ensure that the actual payment of monies is carried out according to a standard process.
  95. New section 32G(2)(c) allows for the regulations to make provision permitting the third party to deduct an additional amount towards its administrative costs. It also provides for this additional sum to be specified in the regulations. Complying with the order will clearly have an administrative cost to the third party: by allowing them to claim a portion of this cost from the non-resident parent, the effect on the third party itself is mitigated.
  96. New section 32G(2)(d) allows for the regulations to make provision about the notification to be given to the non-resident parent regarding the amounts deducted and paid under a final lump sum deduction order. This notification

- should inform the non-resident parent exactly how much money has been deducted.
97. New section 32G(2)(e) allows for the regulations to require the third party to supply certain information to the Commission, and to notify the Commission if certain events occur or circumstances arise. New section 32G(2)(e) also allows for the regulations to define the nature of the information which must be supplied, and the events or circumstances of which the Commission must be notified. It is intended that regulations made under this provision will require the third party to inform the Commission if the non-resident parent closes their account, moves their money, or opens another account with them.
  98. New section 32G(2)(f) provides for the regulations to allow for the variation of both interim and final lump sum deduction orders.
  99. New section 32G(2)(g) to (i) is concerned with the lapsing, revival and discharge of lump sum deduction orders. New section 32G(2)(g) allows the Secretary of State to prescribe in regulations the circumstances in which the order may be allowed to lapse. As an example, it is envisaged that this would apply in cases where the non-resident parent had agreed an appropriate voluntary repayment plan with the Commission. New section 32G(2)(h) allows for the regulations to provide for the revival of an order, and the circumstances in which such a revival would be permitted. This ensures that an order can be revived if necessary – for example, if the non-resident parent agrees a voluntary repayment plan, but later ceases to comply with the plan. New section 32G(2)(i) provides for the regulations to allow or require an order to be discharged. It is intended that an order will be discharged when the non-resident parent has paid the debt in full, or if the parent with care requests it.
  100. Where the regulations make provision for an order to be varied by the Commission, new section 32G(3) prevents that power from being exercised so as to vary the amount of an interim or final lump sum deduction order upwards. This provides a safeguard for the non-resident parent. The amount stated on the order cannot be increased once the order has been made. If further arrears develop and the Commission wishes to collect them by means of a lump sum deduction order, a second interim, and then final, order would have to be made.
  101. New section 32G(4) allows regulations to be made requiring the Commission's consent to be obtained in certain circumstances before a third party is permitted to reduce the amount held. The section also gives the power to make regulations defining what these circumstances would be.
  102. New section 32G(5) is very similar to new section 32B(3) relating to current account deduction orders. It gives the Secretary of State the power to make regulations setting out the priority between (a) other lump sum deduction orders, (b) other orders under any other enactment in England or Wales, and (c) any diligence in Scotland.
  103. New section 32G(6) requires the Secretary of State to make regulations providing for a right of appeal against a final order to a magistrates' court or, in Scotland, the sheriff. Any person affected by the order will be able to appeal against that order – this would include the non-resident parent, the parent with care, the non-resident parent's new family and the third party. However, new section 32G(8) prevents a magistrates' court or sheriff from questioning the original maintenance calculation underlying the deduction order. This will ensure that the remit of the magistrates' court or sheriff in this instance is limited to the lump sum deduction

- order itself. A right of appeal against the maintenance calculation lies to the appeal tribunal.
104. New section 32G(7) allows the Secretary of State to make regulations giving specified persons the right to appeal against a decision by the Commission not to consent to the third party making a payment from the amount held. The persons who may bring such an appeal can also be defined in regulations under this section.
  105. New section 32G(9) sets out two specific areas in which regulations relating to appeals may be made. New section 32G(9)(a) allows the making of regulations regarding the time period within which an appeal must be made. This period is likely to be 28 days. New section 32G(9)(b) allows the making of regulations setting out the powers of a magistrates' court or sheriff in the matter of an appeal against a lump sum deduction order or a refusal by the Commission to consent to a payment being made from funds held.
  106. New section 32H deals with failure to comply with the requirements around lump sum deduction orders. Like new section 32C(1)(b) for current account deduction orders, new section 32H(1)(b) states that failure to comply with a designated regulation made under section 32G in relation to lump sum deduction orders is an offence. The section gives the power to make regulations designating which regulations made under new section 32G it will be an offence to contravene. A third party could thus be charged with an offence if they failed to implement an order correctly, or in other ways failed to comply with the regulations. It is intended that this will ensure that third parties comply with the provisions made around lump sum deduction orders. However, new section 32H(2) provides that it shall be a defence for a person to prove that they took all reasonable steps to comply with the requirement.
  107. The regulations made under section 32D(2)(b) are subject to affirmative resolution. This is felt to be the correct level of Parliamentary scrutiny given that the regulations will set out the kinds of amounts held by third parties against which a lump sum deduction order may be made.
  108. The other regulations relating to lump sum deduction orders are all subject to negative resolution. Regulation making powers in this area are related to the existing regulation powers around deduction from earnings orders set out in section 32 of the current 1991 Act, which are subject to negative resolution.

### **Clause 23 – Administrative liability orders**

109. The Child Support Agency is currently required to apply to a magistrates' court or, in Scotland, the sheriff, to request that a liability order be made against a non-compliant non-resident parent. Clause 23 inserts new sections 32I and 32J into the 1991 Act, allowing a liability order to be made administratively by the Commission. Regulations are used to provide the details of the operation of administrative liability orders.
110. New section 32J(1) gives the Secretary of State the power to make regulations with respect to administrative liability orders. This is similar to the existing general power to make regulations around deduction from earnings orders given to the Secretary of State under section 32(1) of the current 1991 Act.
111. New section 32J(2) specifies particular areas which the regulations may cover. New section 32J(2)(a) allows the regulations to set out the form and content of a liability order. New section 32J(2)(b) allows the regulations to prevent the liability order from coming into force if the whole of the arrears in respect of

which it is made are paid before it comes into force. The non-resident parent therefore has a chance to settle the debt without incurring further penalty. New section 32J(2)(c) specifies that the regulations may provide for a liability order to be discharged; new section 32J(2)(d) allows the regulations to provide for the revival of a liability order in certain circumstances. These circumstances will themselves be described in the regulations.

112. Regulations made under the powers in clause 23 are subject to negative resolution. This is appropriate because regulations will deal with the detail of the scheme in a similar way to the way in which deductions from earnings orders regulations are currently used to set out the detail of that scheme. (Collection and Enforcement Regulations 1992, Part III Deduction from Earnings Orders (SI 1992/1989)). The regulations will not significantly impact on the rights of individuals. The appropriate level of Parliamentary scrutiny should therefore be provided by the negative procedure.

### **Clause 25 - Disqualification for holding or obtaining travel authorisation**

113. Clause 25 inserts new sections 39B, 39C, 39D, 39E, 39F, 39G, 39H and 39I into the 1991 Act. This gives the Commission a power to make an order disqualifying a non-resident parent for holding or obtaining a travel authorisation document (such as a passport) where that parent has wilfully refused or culpably neglected to pay child support. Provisions around such an order are necessarily complex, and regulations set out the details of this power.
114. New section 39D is concerned with the surrender of documents. New section 39D(1) provides the Secretary of State with a power to make regulations describing how a travel authorisation document is to be surrendered, and who it is to be surrendered to. New section 39D(3) allows for the regulations to make provision regarding the circumstances within which a person would be considered to have good reason not to surrender any travel authorisation documents. . Such an example would include where the non-resident parent was hospitalised or abroad.
115. New section 39E is concerned with the non-resident parent's ability to appeal against an order requiring them to surrender a travel authorisation document. New section 39E(3) gives the Secretary of State the power to make regulations setting out the conditions under which an appeal may be brought after the standard appeal period of 28 days has expired. It is intended that such conditions would include cases where for example the non-resident parent was in hospital and thus unable to lodge an appeal within the specified period.
116. New section 39G allows the Commission to recover costs. New section 39G(1) allows the Secretary of State to make regulations determining the amount which the Commission can recover from the person against whom an order is made in respect of administrative costs. This is a safeguard ensuring that the costs imposed by the Commission are under the control of the Secretary of State. New section 39G(2) provides that if on appeal the court affirms or varies an order, the court shall also make an order for costs against the non-resident parent in respect of the costs incurred by the Commission in connection with the appeal. The amount of costs to be paid shall be set out in regulations. Again, this will give the Secretary of State control over the amount of costs that the court is able to impose in these circumstances.
117. New section 39I provides that the Secretary of State may by regulations make further provision in relation to the practical implementation of the order. New

- section 39I(1) provides that regulations may be made in respect of (a) the order itself; (b) appeals against the order; and (c) orders in relation to the costs of making of an order or in relation to an appeal against such an order.
118. New section 39I(2) sets out particular areas which the regulations may cover. New section 39I(2)(a) allows for the regulations to set out the form and content of an order. New section 39I(2)(b) allows for the regulations to specify how the actual surrender of a travel authorisation document is to take place, and how it is to be returned when an order is suspended or ended. New section 39I(2)(c) allows for the regulations to provide that a signed statement from or on behalf of an employer stating that the non-resident parent in question was paid wages shall be taken as evidence that these wages were paid. Thus, if a person claims that an order is unjustified as they cannot pay the child maintenance liabilities required of them, a statement from an employer would be taken as evidence that they are in fact able to pay.
  119. New section 39I(2)(d) allows for the regulations to permit or require a court to dismiss an appeal against an order if the person who makes the appeal fails to appear at the hearing of that appeal. New section 39I(2)(e) allows for the regulations to require the court to inform the Commission of the order made as a result of an appeal. New section 39I(2)(f) allows for the regulations to make provision as to the exercise of the Commission's power to vary or revoke an order if part of the amount specified in the order is paid to an authorised person. New section 39I(2)(g) provides for the regulations to make provision as to the revival of an order, and the circumstances in which it may be so revived. Finally, new section 39I(2)(h) allows for all the powers set out in new sections 39C to 39H to have effect with modifications if the person against whom an order is made is outside the United Kingdom. New section 39I(2)(h) also allows for the regulations to prescribe the modifications which may be made in these circumstances. These provisions will allow an order disqualifying a non-resident parent from holding a travel authorisation document and its related processes to function correctly.
  120. Regulations made under the powers given at new section 39D(1) which will set out the practical detail around the surrender of travel authorisation documents and regulations under new section 39G(1) and (2) which will set out the amount of administrative and legal costs that may be recovered are subject to negative resolution as they deal with technical detail. However the other regulation-making powers in this clause deal with more substantive matters of policy such as appeal against an order and circumstances in which an order should be reduced or revoked; it is recognised that as these are new powers, Parliament will want to have a full debate to scrutinise the regulations made under them in the first instance. They will therefore be subject to affirmative resolution in the first instance. After the first sets of regulations under these powers have been made, later amendments to these regulations will be subject to negative resolution as the main principles will have been established. The orders will be in similar form and content to the existing driving licence disqualification orders made under the Child Support (Collection and Enforcement) Regulations 1992 (SI 1992/ 1989), which are subject to negative resolution.

#### **Clause 26 – Curfew orders**

121. Clause 26 inserts new sections 39J, 39K, 39L, 39M, 39N, 39O, 39P, 39Q, 39R and 39S into the 1991 Act. This gives the Commission the power to apply to a magistrates' court or the sheriff for a curfew order to be made against a non-



- compliant non-resident parent. Such an order would generally be monitored electronically. Provisions around such an order are necessarily complex, and regulations will set out the details of this power.
122. New section 39L sets out the powers in relation to the recovery of costs. New section 39L(1) allows for the regulations to make provision in relation to an amount in respect of the costs of the application for a curfew order and the costs of monitoring compliance. This reflects the provisions in the current 1991 Act that a warrant committing a non-compliant non-resident parent to prison may include the costs of the application, and that this amount may be determined by secondary legislation (sections 40(4)(a)(ii) and 40A(2)(a)(ii)).
  123. New section 39O is concerned with the monitoring of curfew orders. New section 39O(4)(a) allows the making of regulations as to the cases or circumstances in which the person responsible for monitoring the curfew order may allow the person being monitored to be absent from the place specified by the curfew order during specified periods. It is intended that such circumstances might include a medical emergency or a family funeral. New section 39O(4)(b) allows for the regulations to make provision regarding the requirements which may be imposed on an individual who is absent from the place specified by the curfew order during a specified period.
  124. New section 39R allows for the regulations to make provision regarding curfew orders. New section 39R(1) provides for the making of regulations in England and Wales with respect to curfew orders. New section 39R(2) sets out particular areas that the regulations may cover. New section 39R(2)(a) allows for the regulations to set out the form and content of a curfew order. New section 39R(2)(b) allows for the regulations to provide that an application for a curfew order may be renewed if no order has been made. New section 39R(2)(c) allows the regulations to provide that a signed statement from, or on behalf of, an employer stating that the non-resident parent in question was paid wages shall be taken as evidence that these wages were paid. Thus, if a person claims that a curfew order is unjustified as they genuinely cannot pay the child maintenance liabilities required of them, a statement from an employer with regard to wages earned could be taken as sufficient evidence that the person is in fact able to pay.
  125. New section 39R(2)(d) allows the regulations to provide that a justice of the peace has power to issue a summons to a person to appear before a magistrates' court in connection with the making of a curfew order, and, if that person does not appear, to issue a warrant for that person's arrest. New section 39R(2)(e) allows for the regulations to provide that a justice of the peace has power to issue a warrant for a person's arrest for the purpose of securing their presence before a magistrates' court. New section 39R(2)(f) allows for the regulations to set out the means by which a warrant for arrest issued as a result is to be executed. New section 39R(2)(g) allows the regulations to permit both the Commission and the person against whom the order is made to apply to a magistrates' court for the order to be amended or revoked. New section 39R(2)(h) allows for the regulations to make provision for the recovery of costs, the ordering of a search of the non-resident parent, and monitoring compliance, in relation to any amendment of a curfew order.
  126. New section 39R(2)(i) allows the regulations to make provision in relation to the exercise by a magistrates' court of its powers to reduce the period of the curfew, begin the curfew period at a later date, suspend the curfew order, or revoke the order, if a part of the amount specified in the curfew order is paid. The regulations may also make provision in relation to the exercise by a magistrates'

- court of its powers to reduce the period of imprisonment specified in a warrant of arrest or to order the release of the non-resident parent from prison, after a warrant of committal has been issued by the court in the event of an unauthorised breach of the curfew order. The regulations made under new section 39R(2)(i) will ensure that the Secretary of State retains a measure of control over these circumstances – for example, regulations could prevent a court revoking the curfew order or releasing a non-resident parent from prison if only a very small percentage of the amount specified had been paid.
127. New section 39R(3) allows regulations to be made giving a magistrates' court the power to substitute a place or places in Scotland for the place or places in England and Wales specified in a curfew order. This will prevent the non-resident parent attempting to subvert the curfew order by moving to Scotland.
  128. New section 39S provides for regulations about curfew orders in Scotland. Separate powers are required for Scotland to reflect the existing arrangement through which the Court of Session regulates court procedure. New section 39S(1) gives the Secretary of State the power to make regulations making provision for Scotland with respect to curfew orders.
  129. New section 39S(2) sets out particular areas that the regulations may cover. New section 39S(2)(a) allows for the regulations to set out the content of a curfew order. New section 39S(2)(b) allows for the regulations to provide that a signed statement from or on behalf of an employer stating that the non-resident parent in question was paid wages shall be sufficient evidence that these wages were paid. Thus, if a person claims that a curfew order is unjustified as they genuinely cannot pay the child maintenance liabilities required of them, a statement from an employer with regard to wages earned could be taken as sufficient evidence that the person is in fact able to pay. New section 39S(2)(c) allows the regulations to permit both the Commission and the person against whom the order is made to apply to the sheriff for the order to be amended or revoked. New section 39S(2)(d) allows for the regulations to make provision for the recovery of costs, the ordering of a search of the non-resident parent, and monitoring compliance, in relation to any amendment of a curfew order. New section 39S(2)(e) allows the regulations to make provision in relation to the exercise by the sheriff of the powers to reduce the period of the curfew, begin the curfew period at a later date, suspend the curfew order, or revoke the order, if a part of the amount specified in the curfew order is paid. The regulations may also make provision in relation to the exercise by the sheriff of the powers to reduce the period of imprisonment specified in a warrant of arrest or to order the release of the non-resident parent from prison, after a warrant of committal has been issued by the sheriff in the event of an unauthorised breach of the curfew order. The regulations made under new section 39S(2)(e) will ensure that the Secretary of State retains a measure of control over these circumstances – for example, regulations could prevent the sheriff revoking the curfew order or releasing a non-resident parent from prison if only a very small percentage of the amount specified had been paid.
  130. New section 39S(3) allows regulations to be made giving the sheriff the power to substitute a place or places in England and Wales for the place or places in Scotland specified in a curfew order. This will prevent the non-resident parent attempting to subvert the curfew order by moving to England or Wales.
  131. New section 39S(5) allows the Court of Session by Act of Sederunt to regulate the procedure and practice in civil proceedings about curfew orders. Power to make legislation regarding the operation of the Scottish court system is devolved,

- meaning that the Court of Session has jurisdiction to make court rules in this area.
132. The court rules which new section 39S(5) provides for closely resemble those which the Court of Session by Act of Sederunt may make as set out under section 40A(8) of the current 1991 Act. New section 39S(5)(a) allows for the court rules to set out the form of a curfew order. New section 39S(5)(b) allows for the court rules to provide that an application for a curfew order may be renewed if no order has been made. New section 39S(5)(c) allows the court rules to provide that the sheriff has power to issue a citation to a person to appear before them in connection with the making of a curfew order, and, if that person does not appear, to issue a warrant for that person's arrest. New section 39S(5)(d) allows for the court rules to provide that the sheriff has power to issue a warrant for a person's arrest for the purpose of securing their presence before them. New section 39S(5)(e) allows for the court rules to set out the means by which a warrant for arrest issued as a result is to be executed.
  133. The regulations made under the power to make regulations around the recovery of costs made under new section 39L(1) are subject to negative resolution. The power to recover administrative and legal costs is set out on the face of the Bill; the regulations simply provide for the amount which is to be charged to be set out.
  134. The regulations which make provision for authorised absences from curfew orders made under new section 39O(4) are subject to negative resolution as they simply set out the details of circumstances in which a non-resident parent may be absent from the place specified in the curfew order.
  135. The regulations made under the powers to make supplementary provision about curfew orders in England and Wales (new section 39R) and Scotland (new section 39S(1)) are subject to affirmative resolution in the first instance. These regulations deal with many issues around the form and content of curfew orders, and it is recognised that as these are new, Parliament will wish to debate them fully in the first instance when the main principles behind them are being established. Subsequent use of the powers will be subject to negative resolution procedure as the main principles will have been established.
  136. The court rules made under new section 39S(5) are not subject to either negative or affirmative procedure. Court rules made by the Court of Session by Act of Sederunt are signed by the Lord President of the Court of Session on behalf of the Lords of Council and Session.

### ***Debt management powers***

#### **Clause 29 – Powers to treat liability as satisfied**

137. Clause 29 inserts a new section 41C into the 1991 Act. This applies where the Commission is collecting child maintenance, and enables the Commission to off-set the non-resident parent's liability against payments to a third party, or against the liability of the other parent.
138. New section 41C(1)(a) gives the Secretary of State the power to make regulations which provide for two maintenance liabilities to be off-set against each other in circumstances defined in regulations. It is intended that one person's outstanding arrears of child maintenance will be able to be off-set against the other person's current liabilities.

139. New section 41C(1)(b) provides that the regulations may also make provision to enable payments made by the non-resident parent to third parties to be off-set against their child maintenance liabilities. Regulations will prescribe the kinds of payment which will be permitted to be off-set in this way. For example, the payment of a utility bill on the parent with care's behalf could count as a part of the non-resident parent's maintenance liability.
140. New section 41C(2) provides that liability to pay child maintenance will only be treated as satisfied to the extent of the amount being off-set. That is, the two amounts will not necessarily cancel out in full; rather, the amount permitted to be off-set under regulations made under section 41C(1) will be deducted from the total amount for which the person is liable.
141. The regulations provided for in this clause are subject to negative resolution. The concept of off-setting is being introduced in order to address concerns raised by parents who are affected by the Child Support Agency's current inability to offset mutual liabilities in this way. The nature of this provision means that the regulations will cater for cases which form a small percentage of the overall caseload. Experience of special cases which similarly provide for less common cases has shown that changes to these regulations are likely to be minor and infrequent.

#### **Clause 30 – Power to accept part payment of arrears in full and final satisfaction**

142. Clause 30 inserts new section 41D into the 1991 Act. This allows the Commission to make an arrangement with a non-resident parent with arrears of child maintenance whereby the non-resident parent will pay a portion of the arrears in full and final satisfaction of the whole debt.
143. New section 41D(2) enables the Secretary of State to make regulations around the Commission's ability to accept part payment as a full and final settlement of individual arrears. It is also intended that regulations will specify that the parent with care's agreement will be sought before a settlement is finalised in all cases other than those where the debt is due to the Secretary of State.
144. Any regulations made under this power will act as a safeguard on the Commission's powers to accept such a settlement, setting out the details which the Commission must comply with. As these are significant new powers, it is right that Parliament should have a full debate around the first set of regulations made under them. However, it is likely that subsequent changes would only be required on minor procedural matters which would not warrant the use of Parliamentary time. The first regulations made under this provision are therefore subject to affirmative resolution, with subsequent regulations made under the power subject to negative resolution.

#### **Clause 31 - Power to write off arrears**

145. Clause 31 inserts new section 41E into the 1991 Act. New section 41E(1) enables the Commission to extinguish liability for arrears in certain defined circumstances if it would be unfair or inappropriate to attempt further enforcement. New section 41E(1)(a) gives the Secretary of State the power to make regulations setting out the circumstances in which debt can be extinguished. It is intended that such circumstances should include the parent with care requesting that arrears owed to them no longer be enforced because of a reconciliation with the non-resident parent, or the death or adoption of the child.

146. New section 41E(2) allows for the regulations to make provision about the Commission's power to exercise its ability to write off arrears. This is likely to include requirements for the Commission to notify the parties affected by the decision to write off arrears, to explain the effect of the write off, and to give the parties an opportunity to make representations.
147. It is likely that Parliament would wish to scrutinise the regulations made under this clause. Regulations made under the power at new section 41E(1)(a) are subject to affirmative resolution. However, regulations made under the power at new section 41E(2) are subject to affirmative resolution in the first instance only, as it is likely that subsequent changes to these regulations would be minor.

### **Clause 32 – Transfer of arrears**

148. Clause 32 inserts new section 49A into the 1991 Act. New section 49A(1) allows regulations to be made giving the Commission the ability to enter into arrangements to sell outstanding child maintenance debt. The section also allows regulations to define the circumstances in which the Commission will be permitted to sell debt.
149. New sections 49A(3) and 49A(4) specify some of the areas which the regulations made under 49A(1) may cover.
150. New section 49A(3)(a) makes provision for regulations specifying the circumstances in which debt can be transferred. It is intended that the permission of the parent with care to whom the debt is ultimately owed will be sought before any debt is sold, and that a liability order will be made to certify the amount of debt owed. New section 49A(3)(b) specifies that regulations may set out a definition of the persons to whom debt may be transferred. It is intended that debt will only be sold to companies that abide by a professional code of conduct. New section 49A(3)(c) allows for regulations defining the contents of any debt sale contract. This will allow the Secretary of State by regulations to ensure that when the Commission enters into contracts with private sector companies selling them child maintenance debts, it will do so on certain terms. For example, so that human rights legislation and data protection legislation are taken into account. The intention is also to use this power to prevent the onward sale of the debt in a way which would harm the interests of the child.
151. New section 49A(4)(a) specifies that regulations may be made governing the recovery of debts by the person to whom the debt has been transferred. This will allow the means of recovery which the purchaser can use to collect the debt to be defined. It is intended that the purchaser will have the same powers to enforce as would be available to enforce an ordinary civil debt. The purchaser will not have any of the special enforcement powers available to the Commission. New section 49A(4)(b) ensures that, in certain circumstances, the Commission can prevent the collection of debt by the purchaser. It is intended that regulations will provide for a company to cease enforcement action if the safety or welfare of the parent with care or relevant child(ren) was at risk. Inappropriate attempts to enforce the debt would also be included in this provision. These regulations will provide legal protection for the child, and will ensure that the Commission retains some authority over transferred debts. New section 49A(4)(c) enables the regulations to provide for information about the non-resident parent which is necessary for the purposes of collecting the debt to be transferred to the purchaser of the debt.
152. It is felt that main principles of the sale of child maintenance debt to private companies should be fully debated in Parliament when regulations are first laid

under these powers. Further sets of regulations are however likely to be technical in nature. Regulations made under the regulation making powers in this clause are therefore subject to affirmative resolution in the first instance and negative resolution thereafter.

### ***Miscellaneous***

#### **Clause 35 - Additional special cases**

153. Clause 35 amends the existing section 42(2) of the 1991 Act to add split care cases in as a further example of a special case which may be covered in regulations.
154. Split care cases involve a separated couple with two or more children where each parent has the care of one or more of these children. Both parents are thus both parent with care and non-resident parent in relation to one or more of their children. Previously, both parents had a maintenance calculation made and each paid money to the other parent. For example, Mr and Mrs A have two children, B and C. Mr A has care of B, Mrs A has care of C. Mr A pays £20 a week maintenance to Mrs A in respect of child C, Mrs A pays £25 a week maintenance to Mr A in respect of child B.
155. Clause 35 allows for regulations made under section 42 to make provision for such cases to be treated as special cases. This will enable regulations to provide for the two maintenance calculations to be off-set against each other. The parent with the higher calculation will then be required to pay the difference. Thus, in the example above, Mrs A would pay Mr A £5 a week.
156. The regulation making powers contained in this clause are an addition to the existing power to make regulations around special cases given at section 42(2) of the current 1991 Act. As the existing power is negative, negative resolution is considered appropriate for this power. The nature of special cases regulations is such that they cater for more uncommon cases which form a small percentage of the overall caseload. Experience has shown that changes to these regulations are likely to be infrequent.

#### **Clause 36 – Recovery of arrears from deceased’s estate**

157. Clause 36 inserts new section 43A into the 1991 Act. New section 43A(1) allows the Secretary of State to make regulations governing the recovery of arrears of child maintenance from the estate of a deceased non-resident parent.
158. New section 43A(2) lists the types of provisions which the regulations may contain. New section 43A(2)(a) allows for the regulations to ensure that, in the event of a non-resident parent dying with arrears of child maintenance, the arrears will be payable to the Commission by the deceased’s executor or administrator from the deceased’s estate. This will only apply to persons who die on or after the date that the provision comes into force. New section 43A(2)(b) provides for regulations to set out how the amount of arrears should be established in this context. This is intended to be by way of a liability order. New section 43A(2)(c) allows for the regulations to determine the procedure for claiming a debt from a deceased person’s estate.
159. New section 43A(3) allows for regulations to give the executor or administrator the right to institute, continue or withdraw proceedings in relation to the deceased’s outstanding child maintenance arrears. This gives the executor or

- administrator the same appeal rights as the non-resident parent themselves would have had.
160. There is no power in new section 43A to make the regulations retrospective. Therefore they will not apply where the non-resident parent has died before they come into force.
161. The Commission will be in the same position as any ordinary creditor at the time of the non-resident parent's death. It is not intended that child maintenance arrears will take priority over any other debt: it will be paid by the executor or administrator in the same way as other debts, before the estate is distributed to the beneficiaries. As the Regulations under section 43A will simply apply standard legal processes, the appropriate level of parliamentary scrutiny will be provided by the negative procedure.

### **Clause 37 – Disclosure of information to credit reference agencies**

162. Clause 37 inserts new section 49B into the 1991 Act. New section 49B(2)(c) gives the Secretary of State the power to make regulations describing the information which the Commission can supply to credit reference agencies under this section. The information which can be disclosed is limited by new section 49B(2), which states that information can only be supplied if it is (a) held by the Commission for the purposes of the 1991 Act and (b) relates to a non-resident parent. Further, new section 49B(3) prevents information being passed to credit reference agencies unless either the non-resident parent has given consent, or a liability order is in force against them. It is intended that regulations made under section 49B(2)(c) will specify the type of information about the non-resident parent that can be passed to the credit reference agency - for example, name, address, date of birth and payment history.
163. Regulations made under the regulation making powers in this clause are subject to negative resolution. This is considered appropriate because the regulations may only be used to specify the type of information which may be disclosed and the clause itself places limits on the circumstances in which information may be supplied under this clause.

### **Clause 39 – Meaning of “child”**

164. Clause 39 substitutes a new section 55 into the 1991 Act. New section 55(1)(b) gives the Secretary of State the power to make regulations prescribing the conditions which a person aged between 16 and 20 must satisfy in order to be defined as a “child” for child maintenance purposes. It is intended that such conditions will reflect the conditions in child benefit legislation – i.e. that the person is engaged in full-time non-advanced education or “approved training”. The definition of relevant education and training may be subject to change - it is therefore necessary to set this out in regulations rather than primary legislation in order to allow for the definition to be updated.
165. This power is very similar to the power in the Social Security Contributions and Benefits Act 1992 under which regulations are made to define the meaning of a child for child benefit purposes. Those regulations are subject to negative resolution procedure. Negative resolution is also considered appropriate for the regulations made under this power as parameters for the exercise of the power are set in the clause itself (it can only be used in relation to a person aged between 16 and 20) and is intended to be used to ensure that changes are made to keep the definition in line with child benefit legislation.

**Part 4 Lump sum payments: Mesothelioma etc.**

166. Part 4 of the Bill introduces the provisions for the extended compensation scheme for sufferers of mesothelioma and their dependants.

*Mesothelioma lump sum payments***Clause 43 - Lump sum payments**

167. Clause 43 provides for the Secretary of State to make a lump sum payment of compensation to either a person with diffuse mesothelioma, or to their dependant if the person with diffuse mesothelioma is deceased.
168. Subsection (3)(a) provides for regulations to set out the amount that should be paid as a lump sum, and 3(b) provides for the lump sum payment to be set at different levels for different people based on factors such as, for example, whether they are a person with mesothelioma, or a dependant of a person with mesothelioma, or based on their age at the time of the claim. The cost of the new scheme will be met through compensation recovery where payments under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 and the newly proposed scheme are recovered if a civil claim is subsequently successful. Payments under the new scheme will, therefore, be based on monies available from compensation recovery, although the intention is to increase them as funds allow, until they equal the levels of payments made under the 1979 Act.
169. Regulations made under the regulation making powers in this clause are subject to affirmative resolution. The regulations will be uprated each year following debate in both Houses of Parliament.

**Clause 44 - Conditions of entitlement**

170. Clause 44 sets out the conditions that must be satisfied by people with mesothelioma or by a dependant of a person who, immediately before their death, suffered from mesothelioma, before a lump sum payment can be made.
171. Subsection (1)(b) provides that the person with mesothelioma will not be entitled to a lump sum payment if they are eligible for a payment of a type prescribed by regulations. It is envisaged that regulations will prescribe payments under schemes set up in lieu of civil damages that are made by a person liable to make such a payment.
172. Subsection (1)(c) provides that the person with mesothelioma must have such links with the United Kingdom as may be specified in regulations. The intention is to make lump sum payments under the new scheme to those people where there is nothing to suggest that they were exposed to asbestos elsewhere other than in the United Kingdom.
173. Subsection (2)(b) provides that a dependent of a deceased person who suffered from mesothelioma immediately before their death, will be entitled to a lump sum payment if neither they, nor the deceased person with mesothelioma, are not eligible, in respect of mesothelioma, for a payment of a type specified in regulations. It is envisaged that regulations will prescribe payments under schemes set up in lieu of civil damages that are made by a person liable to make such a payment.
174. Subsection (2)(c) provides that the deceased person must have such links with the United Kingdom as may be specified in regulations. The intention is to make



lump sum payments under the new scheme where there is nothing to suggest that the deceased person was exposed to asbestos elsewhere other than in the United Kingdom.

175. Subsection (3)(f) provides that a lump sum payment under Part 4 cannot be made if a payment of a type prescribed by regulations has been paid. It is envisaged that regulations will prescribe payments under schemes set up in lieu of civil damages that are made by a person liable to make such a payment. Subsection (4)(e) provides that a payment will be disregarded from excluding a lump sum payment to a person with mesothelioma or their dependant in prescribed circumstances.
176. Regulations made under the regulation making powers in this clause are subject to negative resolution. This reflects the provision for negative regulations in this area set out in the 1979 Act. The regulations will provide for the technical details around entitlement to a lump sum, this is likely to include provisions that are intended to prevent people coming from outside the United Kingdom to claim compensation.

#### **Clause 45 - Determination of claims**

177. Clause 45 outlines how a claim for a lump sum payment is to be decided.
178. Subsection (1) provides for regulations to set out how a claim for a lump sum payment should be made and to set out the timescale within which a claim can be made. This allows the Secretary of State to specify the format a claim for a lump sum payment should take, and provides for claims to be made within a specified timescale. It is the intention that a claim for a lump sum payment should be made by a person with mesothelioma within a specified time following the diagnosis of mesothelioma or, in the case of a claim from a dependant, within a specified time following the death of the person with mesothelioma.
179. Subsection (2) provides for regulations to set out alternative timescales or extended timescales for making a claim. The intention is that, if a claim is made outside the timescale set in subsection (1), then the decision maker will have the discretion to extend the timescale for claiming if there are good reasons for the claim not being made within the original timescale. However, subsection (3) states that the regulations may provide that no claim may be made in cases where the period provided for in regulations expired before clause 45 was commenced. A claim may also not be made if the prescribed period is only still in effect because of a decision to extend it.
180. Regulations made under the regulation making powers in this clause are subject to negative resolution. This reflects the provision for negative regulations in this area set out in the 1979 Act. The regulations will provide for the technical details around the application process.

#### **Clause 46 - Reconsiderations**

181. Clause 46 provides for the circumstances in which a claim can be looked at again once it has been decided.
182. Subsection (2)(a) provides for regulations to describe the way, and detail the timescales within which a person can ask the Secretary of State to look again at a decision. If a decision on a claim is considered to be wrong by the claimant, or a person acting on their behalf, the intention is that the Secretary of State can be

- asked to look at the decision again and the regulations will specify what format such a request should take and the timescale within which it should be made.
183. Subsection (2)(b) provides for regulations to describe the way, and detail the timescales within which, the Secretary of State can look again at a decision without being asked to do so. The intention here is to be able to reconsider claims where officials have noticed that an error has been made that should be corrected (it should be noted that subsection (5) provides that a payment cannot be recovered following any reconsideration, unless it has been obtained fraudulently).
  184. Regulations made under the regulation making powers in this clause are subject to negative resolution. This reflects the provision for negative regulations in this area set out in the 1979 Act. The regulations are safeguards to ensure that errors can be corrected and decisions reconsidered.

#### **Clause 47 – Appeal to appeal tribunal**

185. Clause 47 is concerned with appeals to an appeal tribunal against a determination by the Secretary of State as to whether a person suffering from mesothelioma or their dependant is entitled to a lump sum payment. The Secretary of State must refer any appeal to an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998 (c.14).
186. Subsection (4)(a) provides for the regulations to set out the manner in which, and the time period within which, an appeal may be made. Subsection (4)(b) provides for the regulations to set out the procedure to be followed if an appeal is made. Subsection (4)(c) provides for regulations enabling an appeal against a decision by the Secretary of State with regard to a claim for a lump sum payment to be treated as an application for the decision to be reconsidered.
187. Regulations made under this regulation power are subject to negative resolution. Regulations will provide for the technical details around appeals made to an appeal tribunal, and are not likely to be controversial: it is therefore felt that the negative procedure is suitable.

#### ***Recovery of mesothelioma and other lump sum payments***

#### **Clause 51 - Amendment of Social Security (Recovery of Benefits) Act 1997**

188. Clause 51 inserts a new section 1A into the 1997 Act. Subsection (1) gives power to the Secretary of State by regulations to make provisions for the recovery of lump sum payments (as defined in subsection (2)) from a subsequent compensation payment. The regulation making power is restricted to circumstances where a lump sum payment has been made in consequence of a disease and a subsequent compensation is made to, or in respect of, the same disease by a person who is, or is alleged to be, liable to any extent in respect of the disease.
189. Subsection (3) sets out some of the particular provisions which may be made by the regulations. They include, (a) provision for the recovery of a lump sum paid to, or in respect of a dependant of the injured person; (b) provision about certificates of recoverable lump sum payments; (c) provision enabling the recovery of a lump sum payment including where the recovery reduces the compensation payment to nil; (e) provision to enable the recovery of a lump sum payment made before commencement of clause 40 in respect of a compensation

- payment made after that commencement date; and (d) power to apply or modify any provision of the 1997 Act.
190. The regulation making power allows substantial changes to be made to the 1997 Act. The reason for this is that recovery of lump sum payments is significantly different from the existing recovery of benefits scheme such that it would require major changes to, and modification of the 1997 Act. If these powers were not made we would need to have a whole new additional compensation recovery scheme in the primary legislation which would, to a large part, mirror the existing scheme, so it is preferable to apply or modify the primary provisions in regulations to deal with the changes to the scheme.
  191. The regulation making powers enable the proposed recovery to be undertaken using much of the framework of the current scheme whilst also allowing for the specific modifications required for this new area of recovery.
  192. The regulation making powers are subject to the negative resolution procedure as the scope of the regulations is limited to circumstances where a lump sum payment and a compensation payment have been paid to, or in respect of, the same person for the same disease. The power is also based on the long established principle of avoiding double compensation and does not introduce any new principles. The regulations will just provide for the details and mechanisms of how this will be achieved. Furthermore, the current regulation making powers in the 1997 Act are predominantly subject to the negative resolution procedure including those which provide a power to modify the enabling Act. The only powers in the 1997 Act which require the affirmative resolution procedure are those which expand the categories of persons to whom the Act may apply by virtue of amending the lists in Schedule 2 of that Act. As these powers clearly define the category of persons in the primary provision it is considered that the negative resolution procedure is sufficient Parliamentary oversight for the matters subject to the prescribing powers in the new section 1A of the 1997 Act.

## **Part 5 General**

193. Part 5 is largely concerned with the technical detail of the Bill. It makes necessary amendments and repeals to both the 1991 Act itself and other legislation which makes reference to child maintenance. Part 5 gives the extent of the Bill, sets out some interpretations of terms used, and gives powers to commence the Bill.

### ***General***

#### **Clause 54 – Minor and consequential amendments**

194. Clause 54 ensures that all necessary amendments are made to both the 1991 Act itself and any other legislation affected by changes made in this Bill.
195. Clause 54 brings Schedule 7 into effect. This Schedule contains a number of delegated powers. These are described below at paragraph 60.
196. Subsection (2)(a) gives the Secretary of State power to make regulations amending, repealing or revoking provisions made in any other Act of Parliament passed on or before the last day of the Parliamentary session within which this Bill passes into law. Subsection (2)(b) gives the same power with respect to instruments made under any other Act before this Bill passes into law. Such amendments, repeals and alterations must be purely consequential on the provisions in the Bill.

197. Schedule 7 of the Bill specifies all such amendments which have been traced; however, if other amendments emerge, they will clearly need to be dealt with smoothly and rapidly to ensure consistency of legislation. These powers will allow such necessary amendments to be carried out and are included as a matter of common practice when a Bill is likely to have many consequential effects. While the powers granted under clause 54(2) amend primary legislation, amendments made in regulations under these powers will be purely consequential in nature. The regulations are therefore subject to negative resolution. This reflects the general practice with such clauses. See for example section 27 of the 2007 Welfare Reform Act (c.5) and section 319(2) of the Pensions Act 2004.

### **Clause 56 - Transition**

198. Clause 56 sets out transitions and savings powers which will allow a smooth change when the provisions made in this Bill come into force as law.
199. Subsection (2) gives the Secretary of State the power to make regulations modifying the textual amendments made in Schedule 3 as necessary during the period between the functions being transferred to the Commission and the repeal of sections 6 ('applications by those claiming or receiving benefit') and 46 ('reduced benefit decision') of the current 1991 Act. It is possible that functions will be transferred to the Commission, and the consequential amendments made in Schedule 2 brought into force, some time before we repeal sections 6 and 46 of the 1991 Act. During this interim period, the Secretary of State may make a reduced benefit decision in cases where a parent with care in receipt of certain benefits does not co-operate with an application for maintenance. Certain of the amendments made in Schedule 3 will need to be modified to take account of this: for example, the requirement to have regard to the welfare of the child in exercising a discretionary power will need to be modified to apply to both the Secretary of State and the Commission.
200. Subsection (3) allows the Secretary of State to make regulations to modify sections 6 and 46 of the current 1991 Act if the Secretary of State considers it expedient before the repeal of these provisions comes into effect. For example, the Secretary of State may wish to extend the reasons for allowing a parent to opt out of being treated as applying for child maintenance, or to adjust the length of time a benefit penalty is in place in cases where a parent with care refuses to co-operate without good cause.
201. Subsection (7) gives the Secretary of State the power to make regulations containing transitional and savings provisions which will allow a smooth change when the provisions made in this Bill come into force as law. This is a standard regulation making power. For example, clause 56(7) closely mirrors section 67(1) of the 2007 Welfare Reform Act.
202. Regulations made under clause 56 are subject to negative resolution. This is because these regulations will be mainly technical in nature, and will mainly apply during the interim period of transition to ensure that primary and secondary powers already agreed by Parliament function correctly during the process of introduction.

### **Clause 59 - Commencement**

203. Clause 59 (2) gives the Secretary of State the power to make order setting out the date(s) upon which the majority of this Bill will come into force. Clause 59 (1) specifies that this clause itself, together with clauses 52 (Regulations), 56(7)

(Transition), 58 (Extent) and 60 (Citation), will come into force on the day the Bill is passed into law as the Child Maintenance Act 2008. All other clauses in the Bill will be brought into force on a date(s) specified in a commencement order.

204. As is usual, commencement orders under the Bill are not to be subject to Parliamentary procedure.

## **Schedules**

### **Schedule 4 – Changes to the calculation of maintenance**

205. Schedule 4 amends schedule 1 of the 1991 Child Support Act.
206. Paragraph 5(2) inserts a new paragraph 5A into schedule 1. This paragraph sets down the rules for determining the maintenance liability which can be imposed on a non-resident parent by the Commission if they also pay maintenance in respect of a child or children outside of the statutory scheme. Paragraph 5A(6)(b) allows the Secretary of State to make regulations specifying the kinds of agreement which will be taken into account under these rules. Such agreements must provide for the non-resident parent to pay money for the benefit of a child habitually resident in the United Kingdom. A regulation making power is needed here to allow the legislation to be updated to take account of the different kinds of statutory and non-statutory maintenance arrangements which are likely to emerge.
207. As the power is new, it is anticipated that Parliament will want to have an initial debate on these matters. The first set of regulations made under new paragraphs 5A(6)(b) will therefore be subject to affirmative resolution. However, once a specification has been drawn up, the regulations may need to have subsequent minor alterations made to them, which it would not be appropriate to debate each time. Subsequent regulations made under this power are therefore subject to negative resolution.
208. Paragraph 8 amends the regulation making powers around shared care into paragraph 9 of Schedule 1 of the current 1991 Act. In shared care cases, the qualifying child(ren) lives with the non-resident parent for a proportion of nights each year. A deduction in respect of the cost of providing care for the child(ren) at these times is made from the maintenance liability broadly according to the percentage of time the non-resident parent has care. Paragraph 8(2) gives the Secretary of State the power to make regulations setting out how arrangements for care of a qualifying child by the non-resident parent can be considered to be shared care for the purpose of a reduction in a maintenance liability. Paragraph 8(3) allows for the regulations to set out how the determination of how many nights of care by the non-resident parent actually count. Regulations around shared care are needed as this is a very complex area with the potential for a very large number of different circumstances to be taken into account in different cases.
209. Paragraph 8(4) allows the Secretary of State to make regulations allowing the Commission to make assumptions about the nature of shared care arrangements for a particular case, and to adjust a maintenance liability accordingly. Such an assumption can only be made for a time period also specified in regulations made under this power. This will allow the Commission to act in cases where it has little or no clear evidence as to the nature or status of a shared care arrangement.
210. As a power to make negative regulations around shared care already exists in the 1991 Act, regulations made under paragraphs 8(2) and 8(3) are subject to

negative resolution. However, as paragraph 8(4) gives the power to make regulations allowing the Commission to make assumptions about shared care which may be different to the reality, and could considerably impact on the amount of maintenance due, regulations made under the power granted in this subparagraph are subject to affirmative resolution in the first instance so that a full debate will be had in establishing the principle of working on the basis of an assumption. Subsequent regulations which may make only minor or technical changes e.g. the length of the period for which the assumption is made, will be subject to negative resolution

211. Paragraph 9 amends Schedule 1 paragraph 10 of the 1991 Act so as to enable gross weekly income to be calculated. The amended paragraph 10 (2)(a) allows weekly income to be calculated by reference to a past period. This allows the Secretary of State to make provision for taking HMRC data for the last tax year as the normal source of information when making a maintenance calculation. Paragraph 10(2)(b) re-enacts current wording of paragraph 10(2) which allows for the estimation of income if the information available is considered ‘unreliable or insufficient, or relates to an atypical period’.
212. As a high level of detail is involved in setting out how weekly income is to be calculated, the process is set out in regulations rather than primary legislation. As regulations made under these powers will lie at the very heart of the way maintenance is calculated by the Commission, they are subject to affirmative resolution in the first instance. However, given that further amendments to the regulations may be minor or technical, for example, where required solely to mirror changes to HMRC income tax legislation, subsequent regulations will be subject to negative resolution. An identical approach was taken to the introduction of child support regulations giving the meaning of “net weekly income”, these regulations being made under the Child Support, Pensions and Social Security Act 2000.

#### **Schedule 5 – Maintenance calculations: Transfer of cases to new rules**

213. Schedule 5 sets out the powers of the Secretary of State and the Commission in relation to the arrangements for transferring cases to the new calculation rules. The process is to be initiated in each case by the Commission requiring the parties to choose whether to remain in the statutory scheme under the new rules. If they do not exercise the option to remain, liability for maintenance will stop accruing. The Secretary of State will have the power to make regulations governing this process.
214. Paragraphs 1 to 4 set out the power to require existing cases to make a decision as to whether to stay in the statutory scheme under the new calculation rules.
215. Paragraph 1(1) allows the Commission to require existing clients to choose whether or not remain in the statutory scheme under the new calculation rules. Paragraph 2 (1) provides for the Secretary of State to make regulations setting out the provisions necessary to deal with the movement of existing cases. This will be a complex and detailed process, the exact requirements of which will often not emerge until the process is already underway. It is therefore necessary for the Secretary of State to have wide ranging regulation making powers in this area.
216. Paragraph 2(2) lists some of the areas which the regulations cover in relation to the process by which existing clients may be required to decide whether or not to stay in the statutory scheme under the new calculation rules. Paragraph 2(2)(a) allows for the regulations to specify the timing around offering clients such a

- choice. Paragraph 2(2)(b) makes provision for regulations to offer groups of cases this choice in stages. Together, these two provisions will allow cases to be dealt with in tranches over a period of time. By staggering the transition process in this way, the Commission's workload will be controlled and backlogs of work should be avoided. Paragraph 2(2)(c) provides that regulations may set out the principles by which cases will be separated into tranches. This could be used to ensure that the most pressing or vulnerable cases can be dealt with first if necessary. Paragraph 2(2)(d) allows for the regulations to specify the process which the Commission should use in requesting that clients make the decision. Paragraph 2(2)(e) allows the transition to be managed in accordance with a scheme designed by the Commission and approved by the Secretary of State.
217. Paragraph 3(1) requires the Secretary of State to make regulations specifying when and by what means an individual client shall make the decision to stay in the statutory scheme under the new calculation rules. Provision is to be made in regulations as decisions about the exact process cannot be made until more precise data around the type and number of cases involved is known.
218. Paragraph 3(2) specifies three important areas which the Secretary of State shall cover in the regulations in relation to the choice to be made by parents. These regulations will make remaining in the statutory scheme under the new calculation rules dependent upon clients 'opting in' – i.e., a case will only transfer to the new calculation rules if the client actively requests that it does so. Paragraph 3(2)(a) ensures that regulations will make provision for the timeframe which an individual client is given to make a decision. It is important for the operational efficiency of the Commission that decisions are made and cases moved within a reasonable amount of time. Paragraph 3(2)(b) specifies that regulations will only allow a client to be treated as having made the decision to remain with the statutory scheme under the new calculation rules if an application to the Commission is made. Paragraph 3(2)(c) specifies that the Secretary of State shall define in regulations the form and content of this application. Thus if a client does not make a formal application to the Commission within a set time period, the Commission will be entitled to close their case.
219. Paragraph 5 provides that an ongoing child maintenance liability calculated under existing schemes will cease to accrue after a case has either transferred to the new calculation rules or ceased to come under the authority of the Commission. Paragraph 5(1) provides that the Secretary of State may make regulations specifying the date upon which existing liability will cease to accrue. It is likely that this date will be the day before the new maintenance liability commences. This will protect the parent with care by ensuring that there is no interruption in the non-resident parent's maintenance liabilities while the new application is processed. The process will thus be seamless.
220. Paragraph 5(2) provides for the regulations to set the date upon which existing liability will cease to accrue for cases which are still in the process of applying for maintenance under the existing schemes when the process of parental choice begins. It is intended that such an application will be processed and a liability commenced. Liability under an existing scheme will therefore accrue until such time as either the new maintenance liability comes into force or the case moves out of the Commission's authority. Again, it is likely that the regulations will provide for a child support scheme liability to cease the day before the new liability comes into force, ensuring a seamless transition.

221. Paragraph 6(1) provides for the regulations to cover aspects of the process by which existing cases remain in the statutory scheme under the new calculation rules in greater detail. Paragraph 6(2)(a) allows for the regulations to give greater detail about the procedure by which applications to remain in the statutory scheme under the new calculation rules are to be made. Paragraph 6(2)(b) allows for the regulations to determine how the 1991 Act is applied to such applications. Paragraph 6(2)(c) allows for the regulations to deal with any financial adjustments which may be considered necessary as cases move.
222. Paragraph 6(3) provides for the regulations to allow the Commission to treat an outstanding application for a maintenance assessment or calculation as withdrawn if none of the interested parties chooses to stay in the statutory scheme under the new calculation rules. This provision will ensure that the Commission is not burdened with cases which have not applied to the Commission itself but which cannot be closed down.
223. Regulations made under the powers granted in Schedule 5 are subject to negative resolution. Regulations will simply set out the process by which cases are moved from one statutory scheme to another. The process by which cases transfer will take several years, and issues may emerge requiring the process to be adapted rapidly. The negative procedure will allow the regulations to be changed quickly if necessary.

#### **Schedule 7 – Minor and consequential amendments**

224. Paragraph 1(3) provides for a right of appeal to the appeal tribunal under section 20 of the 1991 in relation to a decision of the Commission to make a liability order under the new section 32I. Regulations will be made under the existing provisions of section 20 in relation to such appeals, providing for the time in which such an appeal must be brought and the procedures which apply. The Social Security and Child Support (Decisions and Appeals) Regulations 1999 currently make provision under section 20 of the 1991 Act.
225. Paragraph 1(11) replaces the current section 39 ('Liability orders: enforcement throughout United Kingdom') with a new section 39 ('Enforcement in Great Britain of Northern Ireland liability orders'). Administrative liability orders will be made by an administrative authority, the Commission, which will have power throughout Great Britain. The current power to make regulations providing for the enforcement of liability orders in different parts of the United Kingdom and Northern Ireland will be replaced with a new regulation making power which makes provision for any liability order made by corresponding child maintenance authorities in Northern Ireland to be enforced in England, Wales or Scotland. This amendment is consequential on the amendments made in relation to liability orders. It does not add any new powers.
226. Paragraph 1(14) inserts a new subsection (b) into section 40A(6) of the 1991 Act, which is concerned with the commitment to prison of non-compliant non-resident parents in Scotland. This allows regulations to make provision for a statement in writing, made by or on behalf of a liable person's employer, that wages have been paid to the liable person to be taken as establishing that these wages have been paid. Such evidence will be used in order to ascertain that the non-resident parent failed to pay their child maintenance liabilities as a result of wilful refusal or culpable neglect, rather than because they were genuinely unable to do so.



227. Paragraph 1(17) substitutes a new subsection (12)(d) for section 40B of the 1991 Act, which is concerned with the application of section 40B (disqualification from driving: further provisions) in Scotland. This provides for regulations to allow for a statement in writing, made by or on behalf of a liable person's employer and stating that wages have been paid to the liable person, to be taken as establishing that these wages have been paid retains. The existing provision that the Scottish Court's power to regulate the procedure and practice in the sheriff court by Act of Sederunt shall include the power to make provisions corresponding to the existing section 40A(8) of the 1991 Act (commitment to prison: Scotland) is retained.
228. Paragraph 1(20) inserts new subsections (1A), (1B) and (1C) into section 50 of the current 1991 Act, which is concerned with the unauthorised disclosure of information. Subsection (1A) allows regulations to be made specifying further kinds of employment which are to be subject to rules around the unauthorised disclosure of information set out in section 50. This is a safeguard allowing regulations to be made including companies and areas of employment to be bound by unauthorised disclosure of information rules as and when necessary, and in some detail. Subsection (1C)(b) allows regulations to be made setting out other kinds of employment not covered by the existing section 50(1) of the 1991 Act to which further rules around the unauthorised disclosure of information set out in subsection (1B) apply. Subsection (1B) states that a person who is or was employed in the types of employment set out in regulations made under subsection (1C)(b) commits an offence if they disclose information acquired during that employment which was, or was derived from, information acquired or held for the purposes of this Bill, and which relates to a particular person. Again, having this regulation making power will allow the categories of employment to be updated as and when necessary.
229. Paragraph 1(29) extends schedule 1 paragraph 10A(1)(b) of the 1991 Act, which allow regulations to substitute in specified paragraphs of that schedule different amounts to those set out there. The Government has undertaken to review the maintenance calculation amounts during the course of each Parliament. These provisions enable any changes found necessary to be made without undue delay. Paragraph 1(29) firstly applies to the £800 amount specified in paragraph 2(2) of schedule 1 to the 1991 Act, as amended by schedule 4(3) of the Bill. In cases where the basic rate of maintenance is appropriate, paragraph 2(2) provides that different percentage rates are applied to the balance of a non-resident parent's gross weekly income in excess of £800. Paragraph 1(29) also applies to the £7 amount set out in paragraph 5A(2) of schedule 1 to the 1991 Act, as inserted by schedule 4(5) of the Bill. Where a child supported under a non-resident parent's private arrangement is to be recognised within a statutory maintenance calculation, paragraph 5A(2) provides a minimum weekly statutory liability of £7.
230. Paragraph 1(31) amends paragraph 14 of Schedule 1 to the 1991 Act. The Secretary of State's current power to make regulations governing the treatment of two or more applications made in respect of the same qualifying child(ren) is retained. The regulations may prescribe the circumstances in which such multiple applications may be treated as one application (paragraph 14(a)), and may allow for a calculation made with reference to the earlier application to be replaced with a calculation made with reference to the later application (paragraph 14(b)). It is intended that these powers will be used in the event of both the parent with care and the non-resident parent (and, in Scotland, the qualifying child themselves) making an application for a maintenance calculation. This paragraph is identical to the current paragraph 14(1) of schedule 1 to the 1991 Act and does not

contain any new regulation-making powers; the amendment being made by the substitution of new paragraph 15 is simply to remove paragraph 14(2), which makes reference to applications ‘treated as made’ under section 6 of the 1991 Act, to reflect the repeal of section 6.

231. Paragraph 4 makes amendments to Schedule 5 to the Tax Credits Acts 2002. Paragraph 4(2) replaces paragraphs 4(2) and (3) of the current schedule, which relate to the supply of information about tax credit, child benefit of guardians’ allowance held by Her Majesty’s Revenue and Customs to the Secretary of State or the Northern Ireland Department for, amongst other things, the purposes of child maintenance. The substituted paragraph 4(2) allows information to be supplied to the Secretary of State or persons providing services to the Secretary of State to be used for, amongst other things, such statistical study or evaluation as the Secretary of State may determine in regulations. Paragraph 4(3A) makes the same provision with respect to the Northern Ireland Department or a person providing services to the Northern Ireland Department. The Secretary of State will therefore be able to make regulations allowing tax credit, child benefit and guardians’ allowance information provided by Her Majesty’s Revenue and Customs to be used by both the Department and the Commission to calculate child maintenance liabilities and in studies and evaluations of child maintenance.
232. As the regulation making powers set out in Schedule 7 are generally based on existing powers which are subject to negative resolution and are consequential amendments rather than conferring wholly new regulation-making powers on the Secretary of State, it is considered appropriate to retain negative resolution as the parliamentary procedure for most of the powers. However, regulations made under schedule 1 paragraph 10A(1)(b) of the 1991 Act are subject to affirmative resolution: therefore the extensions to this power set out at paragraph 1(29) are subject to affirmative resolution. As regulations under this power would allow the maintenance calculation amounts to be changed, a higher level of Parliamentary scrutiny is appropriate.

December 2007

### **Annex 1: Delegated Powers in the Bill**

<b>Clause</b>	<b>Power</b>	<b>Procedure</b>
<b>Part 1</b>		
3(2)	Prescribe additional function for the Commission if necessary or expedient in relation to its objectives	Negative
6(1)	Prescribe the Commission’s charging regime	Affirmative
6(2)(a)	Prescribe when a fee may be charged	Affirmative
6(2)(b)	Power to set out Commission’s charging regime: amount which may be charged	Affirmative
6(2)(c)	Power to set out Commission’s charging regime: information needed for determining amount to be charged	Affirmative
6(2)(d)	Prescribe who is liable to pay	Affirmative
6(2)(e)	Prescribe when fee is payable	Affirmative
6(2)(f)	Prescribe ability to recovery of fees	Affirmative

6(2)(g)	Prescribe ability to waive, reduce or repay of fees	Affirmative
6(3)	Prescribe for the charging of fees unrelated to costs	Affirmative
6(4)(a)	Provide that the provisions of the Child Support Act 1991 with respect to the collection of child support maintenance shall apply equally to fees, with any necessary modifications	Affirmative
6(4)(b)	Provide that the provisions of the Child Support Act 1991 with respect to the enforcement of any obligation to pay child support maintenance shall apply equally to fees, with any necessary modifications	Affirmative
6(5)	Provide for a person affected by a decision of the Commission concerning fees to have a right of appeal to an appeal tribunal.	Negative
7(4)((b)	Prescribe public bodies as 'relevant bodies' with whom the Commission may enter into an arrangement	Negative
11(2)	Prescribe when a child is/is not to be regarded as living apart from a parent	Negative
<b>Part 2</b>		
13(5)	Prescribe persons to whom the Transfer of Undertakings (Protection of Earnings) Regulations 2006 will not apply when staff transfer to the Commission	Negative
<b>Part 3</b>		
17(2)	Prescribe ability to make supersessions	Affirmative where makes the type of provision described in 17(3)(a) or (b) in the first instance only
17(3)(a)	Prescribe cases and circumstances when a supersession will immediately be made	Affirmative in the first instance only
17(3)(b)	Prescribe how an earlier unactioned change of circumstances is dealt with when a supersession is made	Affirmative in the first instance only
17 (3)(c)	Prescribe the procedures around supersessions	Negative
19 29(4)(a)	Require a deduction from earnings order not to be used as primary method of collection if there is good reason not to use a deduction from earnings order	Negative
19 29(4)(b)	Require a person against whom a deduction from earnings order is imposed as a primary means of collection to have the right of appeal to a magistrate's court	Negative
19 29(5)(a)	Prescribe matters which are not be taken into account in determining good reason for not imposing a deduction from earnings order	Negative
19 29(5)(b)	Prescribe circumstances which are not be taken into account in determining good reason for not imposing a deduction from earnings order	Negative

201(8)	Prescribe exceptions to definition of earnings to which a deduction from earnings order can be attached	Negative
21 32B(1)	Make provision around current account deduction orders	Negative
21 32B(2)(a)	Require an order to specify the amount in respect of which it is made	Negative
21 32B(2)(b)	Require an order to specify the amounts which are deducted under it to meet maintenance liabilities	Negative
21 32B(2)(c)	Require an order to specify the dates upon which deductions are to be made	Negative
21 32B(2)(d)	Prescribe the rate which the rate of deduction under an order must not exceed	Negative
21 32B(2)(e)	Define the circumstances in which money in a current account is to be disregarded	Negative
21 32B(2)(f)	Provide for the payment of sums deducted by an order to the Commission	Negative
21 32B(2)(g)	Allow the deposit-taker to deduct an amount towards administrative costs, and to define this amount	Negative
21 32B(2)(h)	Provide for the non-resident parent to be notified of amounts deducted and paid under an order	Negative
21 32B(2)(i)	Require the deposit-taker to notify the Commission in a prescribed manner and time limit if the account specified in the order does not exist, and of any other accounts held with the deposit-taker by the non-resident parent.	Negative
21 32B(2)(j)	Require the deposit-taker to notify the Commission in a prescribed manner and time limit if the account specified in the order is closed, and of any new accounts opened with the deposit-taker by the non-resident parent	Negative
21 32B(2)(k)	Provide for the circumstances in which an application for review may be made to the Commission	Negative
21 32B(2)(l)	Provide for the variation of orders	Negative
21 32B(2)(m)	Require the deposit-taker to comply with any variation to the order	Negative
21 32B(2)(n)	Provide for an order to lapse in certain circumstances,	Negative
21 32B(2)(o)	Provide for an order to be revived in certain circumstances	Negative
21 32B(2)(p)	Allow or require an order to be discharged	Negative
21 32B(2)(q)	Provide for the giving of notice by the Commission to the deposit-taker that an order has lapsed or ceased to have effect	Negative
21 32B(3)(a)	Provide for one current account deduction order to have priority over another current account deduction order made on the same account	Negative
21 32B(3)(b)	Provide for priority between a current account deduction order and any other order made on the same account (England and Wales)	Negative
21 32B(3)(c)	Provide for priority between a current account deduction order and any diligence made on the same account (Scotland)	Negative

21 32B(4)(a)	Provide for any person affected by a current account deduction order to have a right of appeal to a magistrates' court (in Scotland a sheriff) against the making of such an order	Negative
21 32B(4)(b)	Provide for any person affected by a current account deduction order to have a right of appeal to a magistrates' court (in Scotland a sheriff) against any decision made by the Commission around an application for review of such an order	Negative
21 32B(6)(a)	Provide for the period within which a right of appeal may be exercised	Negative
21 32B(6)(b)	Provide for the powers of a magistrates' court/sheriff in relation to an appeal	Negative
21 32C(1)(b)	Designate failure to comply with a regulation under 32B to be an offence	Negative
22 32D(2)(b)	Prescribe the amounts due or accruing to the non-resident parent from a third party against which a lump sum deduction order may be made	Affirmative
22 32D(5)	Prescribe exceptions to the power to prevent the third party from doing anything to reduce the amount held under an interim lump sum deduction order	Negative
22 32D(9)	Prescribe the period after which an interim lump sum deduction order shall cease to be in force	Negative
22 32E(1)(b)	Prescribe the period during which representations regarding an interim lump sum order may be made	Negative
22 32E(8)	Prescribe exceptions to the power to prevent the third party from doing anything to reduce the amount held under a final lump sum deduction order	Negative
22 32F(3)	Prescribe exceptions to the continuing power to prevent the third party from doing anything to reduce the amount held under a final lump sum deduction order if an amount of arrears remains unpaid after any payment required once the relevant period ends has been made	Negative
22 32F(4)(c)	Prescribe events or circumstances which will lead to the relevant period (during which time a final lump sum deduction order has effect) coming to an end	Negative
22 32G(1)	Make provisions around lump sum deduction orders	Negative
22 32G(2)(a)	Prescribe the conditions which are to be disregarded in determining whether amounts to which section 32D (2) applies are amounts due or accruing to the liable person	Negative
22 32G(2)(b)	Provide for the payment to the Commission of lump sum deductions	Negative
22 32G(2)(c)	Allow an amount to be deducted to cover administrative costs by the lump sum holder, in addition to maintenance arrears, and power to prescribe the amount deductible	Negative
22 32G(2)(d)	Provide for the giving of notification to the non-resident parent that a final lump sum deduction order has been made	Negative
22 32G(2)(e)	Require third party which deducts the lump sum to supply	Negative

	information to the Commission and to notify the Commission if certain events occur or circumstances arise	
22 32G(2)(f)	Provide for a lump sum deduction order to be varied	Negative
22 32G(2)(g)	Allow a lump sum deduction order to lapse in certain circumstances	Negative
22 32G(2)(h)	Power to allow a lump sum deduction order to be revived in certain circumstances, and to define these circumstances	Negative
22 32G(2)(i)	Allow or require a lump sum deduction order to be discharged	Negative
22 32G(4)	Require the Commission's consent to be obtained in certain circumstances before things which would otherwise be in breach of sections 32D (3) (amount of arrears in respect of which order is made must be specified), 32E (6) (requirement preventing the third party from doing anything to reduce the amount held) and 32F (2)(b) and 3(b) (requirement continuing to prevent the third party from doing anything to reduce the amount held) may be done under regulations made under sections 32D (4), 32E (7) and 32F (4)	Negative
22 32G(5)(a)	Provide for one lump sum deduction order to have priority over another lump sum deduction order made on the same lump sum	Negative
22 32G(5)(b)	Provide for priority between a lump sum deduction order and any other order made on the lump sum (England and Wales)	Negative
22 32G(5)(c)	Provide for priority between a lump sum deduction order and any diligence made on the same account (Scotland)	Negative
22 32G(6)	Provide for any person affected by a final lump sum deduction order to have a right of appeal to a magistrates' court or sheriff	Negative
22 32G(7)	Provide for certain person's to have a right of appeal to a magistrates' court or sheriff if the Commission's consent is withheld where the Commission's consent is required in order to proceed.	Negative
22 32G(9)(a)	Prescribe the period within which a right of appeal may be exercised	Negative
22 32G(9)(b)	Prescribe the powers of a magistrates' court or sheriff in relation to an appeal	Negative
22 32H(1)(a)	Provide for failure to comply with a regulation under 32H to be an offence	Negative
23 32I (3)	Prescribe the time period which must expire before a liability order shall come into force	Negative
23 32J (1)	Make regulations around liability orders	Negative
23 32J(2)(a)	Prescribe the form and content of a liability order	Negative
23 32J(2)(b)	Provide for a liability order not to come into force if the whole of the amount has been paid before the prescribed time period ends	Negative
23 32J(2)(c)	Provide for the discharge of a liability order	Negative
23 32J(2)(d)	Provide for the revival of a liability order in certain circumstances,	Negative
23 32K(4)(a)	Prescribe the period which an appeal may be brought	Negative
23 32K(4)(b)	Define the powers of an appeals tribunal with respect to appeals	Negative

25 39D(1)	Prescribe the manner in which, and person to whom, a travel authorisation document is to be surrendered	Negative
25 39D(3)	Prescribe the circumstances in which a non-resident parent is to be regarded as good reason not to surrender a travel authorisation document	Affirmative in the first instance only
25 39E(3)	Prescribe the conditions within which a late appeal may be brought	Affirmative in the first instance only
25 39G(1)	Determine the amount which may be charged to the non-resident parent in administrative costs around the making of an order requiring the surrender of a travel authorisation document	Negative
25 39G(2)	Determine the amount which may be charged to the non-resident parent in legal costs around the making of an appeal against an order requiring the surrender of a travel authorisation document	Negative
25 39I(1)(a)	Make regulations around orders requiring the surrender of a travel authorisation document	Affirmative in the first instance only
25 39I(1)(b)	Make regulations around appeals against orders requiring the surrender of a travel authorisation document	Affirmative in the first instance only
25 39I(1)(c)	Make regulations around the recovery of the Commissions costs in relation to orders requiring the surrender of a travel authorisation document	Affirmative in the first instance only
25 39I(2)(a)	Prescribe the form and content of an order requiring the surrender of a travel authorisation document	Affirmative in the first instance only
25 39I(2)(b)	Prescribe the manner of the surrender of documents and the manner of their return	Affirmative in the first instance only
25 39I(2)(c)	Provide that a statement in writing from an employer shall be taken as evidence of the non-resident parent having been paid	Affirmative in the first instance only
25 39I(2)(d)	Permit or require a court to dismiss an appeal where the person has failed to appear at the appeal hearing	Affirmative in the first instance only
25 39I(2)(e)	Require a court to send notice to the Commission of any order made on an appeal	Affirmative in the first instance only
25 39I(2)(f)	Define the exercise by the Commission of the power to vary orders	Affirmative in the first instance only
25 39I(2)(g)	Prescribe for the revival of an order	Affirmative in the first instance only
25 39I(2)(h)	Provide for the circumstance in which an order to surrender a travel authorisation document is to have effect if the person against whom	Affirmative in the first instance

	the order is made is outside of the UK	only
26 39L(1)(a)	Determine the amount which the Commission can charge to the non-resident parent in respect of the costs of an application for a curfew order	Negative
26 39L(1)(b)	Determine the amount which the Commission can charge to the non-resident parent in respect of the costs of monitoring compliance with a curfew order	Negative
26 39O(4)(a)	Define the cases and circumstances in which the monitoring officer may permit the non-resident parent to be in breach of the curfew order	Negative
26 39O(4)(b)	Prescribe the requirements which may imposed in relation to a permitted breach of a curfew order	Negative
26 39R(1)	Make regulations around curfew orders in England and Wales	Affirmative in the first instance only
26 39R(2)(a)	Prescribe the form and content of a curfew order	Affirmative in the first instance only
26 39R(2)(b)	Allow an application for a curfew order to be renewed where no curfew order has yet been made	Affirmative in the first instance only
26 39R(2)(c)	Provide that a statement in writing from an employer shall be taken as evidence of the non-resident parent having been paid	Affirmative in the first instance only
26 39R(2)(d)	Allow a justice of the peace to issue a summons to the non-resident parent to appear before a magistrates' court and if necessary a warrant for arrest	Affirmative in the first instance only
26 39R(2)(e)	Allow a justice of the peace to issue a warrant for the arrest of a non-resident parent without first issuing a summons	Affirmative in the first instance only
26 39R(2)(f)	Prescribe the manner of execution of a warrant for arrest	Affirmative in the first instance only
26 39R(2)(g)	Allow the amendment or revocation of requirements imposed by a curfew order application to a magistrates' court	Affirmative in the first instance only
26 39R(2)(h)	Provide for the recovery of costs, ordering of a search and making of safeguards around any emendation of a curfew order	Affirmative in the first instance only
26 39R(2)(i)	Provide for the exercise by a magistrates' court of the power to reduce the imprisonment period or order release if part of the outstanding liability is paid following committal to prison for breach of a curfew order	Affirmative in the first instance only
26 39R(3)	Allow a magistrates' court to substitute a place in Scotland for the place or places specified in a curfew order	Affirmative in the first instance only



26 39S(1)	Make regulations about curfew orders in Scotland	Affirmative in the first instance only
26 39S(2)(a)	Provide for the content of a curfew order	Affirmative in the first instance only
26 39S(2)(b)	Provide that a statement in writing from an employer shall be taken as evidence of the non-resident parent having been paid	Affirmative in the first instance
26 39S(2)(c)	Allow the amendment or revocation of requirements imposed by a curfew order application to the sheriff	Affirmative in the first instance only
26 39S(2)(d)	Provide for the recovery of costs, ordering of a search and making of safeguards around any emendation of a curfew order	Affirmative in the first instance only
26 39S(2)(e)	Provide for the exercise by the sheriff of the power to reduce the period of the curfew; begin the curfew at a later date; suspend the curfew order; revoke the order; reduce the imprisonment period or order release if part of the outstanding liability is paid following committal to prison for breach of a curfew order	Affirmative in the first instance only
26 39S(3)	Allow the sheriff to substitute a place in England or Wales for the place or places specified in a curfew order	Affirmative in the first instance only
26 39S(5)(a)	Provide for the form of a curfew order	None
26 39S(5)(b)	Allow an application for a curfew order to be renewed where no curfew order has yet been made	None
26 39S(5)(c)	Allow the sheriff to issue a summons to the non-resident parent to appear before them and if necessary issue a warrant for arrest	None
26 39S(5)(d)	Allow the sheriff to issue a warrant for the arrest of a non-resident parent without first issuing a summons	None
26 39S(5)(e)	Prescribe the manner of execution of a warrant for arrest	None
29 41C(1)(a)	Enable the Commission to set off liabilities to pay child support maintenance, and power to define the circumstances in which such off setting may take place	Negative
29 41C(1)(a)	Prescribe the circumstances in which off setting may take place	Negative
29 41C(1)(b)	Enable the Commission to set off liabilities to pay child support maintenance with certain other payments. Power to define the circumstances in which such off setting may take place.	Negative
30 41D(2)	Make regulations around the Commission's ability to accept part payment of arrears in full and final satisfaction	Affirmative in the first instance
31 41E(1)(a)	Prescribe the circumstances in which the Commission may write off areas of child maintenance	Affirmative
31 41E(2)	Provide for the Commission's exercise of its power to write off arrears of child maintenance	Affirmative in the first instance
32 49A(1)	Allow the Commission to enter into transfer arrangements to factor	Affirmative in

	debt, and power to prescribe the circumstances in which debt may be so transferred	the first instance
32 49A(3)(a)	Specify when arrears of child maintenance may be transferred	Affirmative in the first instance
49A(3)(b)	Specify the description of person with whom transfer arrangements may be entered into	Affirmative in the first instance
32 49A(3)(c)	Specify the terms and conditions which transfer arrangements must include	Affirmative in the first instance
32 49A(4)(a)	Provide for the recovery of debt to which a person is entitled by virtue of transfer arrangements	Affirmative in the first instance
32 49A(4)(b)	Enable the Commission to prevent a person to whom debt has been transferred from taking steps to recover it, and power to define the circumstances in which this prevention may be used	Affirmative in the first instance
32 49A(4)(c)	Enable the Commission to supply certain information for the purposes of enabling a debt to be recovered to the person to whom the debt has been factored	Affirmative in the first instance
35 42(2)(g)	Prescribe split care cases as special cases	Negative
36 43A(1)	Provide for the recovery of child maintenance arrears from a deceased non-resident parent's estate	Negative
36 43A(2)(a)	Provide for arrears for which a deceased non-resident parent was liable to become debts payable out of the estate by the deceased's executor or administrator	Negative
36 43A(2)(b)	Provide for the amount of such arrears to be established	Negative
36 43A(2)(c)	Provide for the procedure in relation to claims on a deceased's estate	Negative
36 43A(3)	Provide for proceedings to be instituted, continued or withdrawn by the estate's administrator or executor	Negative
37 49B(2)(c)	Define the types of information which the Commission may pass to a credit reference agency	Negative
39 55(1)(b)	Define the conditions which must be met for a young person aged between 16 and 20 to be considered to be a child	Negative
<b>Part 4</b>		
43(3)(a)	Prescribe the amount of a lump sum payable to a person with diffuse mesothelioma	Affirmative
43(3)(b)	Prescribe different amounts for different cases, classes of cases or circumstances	Affirmative
44(1)(b)	Provides that eligibility for a payment under a prescribed scheme will disqualify a person with mesothelioma for a payment	Negative
44(1)(c)	If necessary, prescribe the connections which a person with diffuse mesothelioma must have with the United Kingdom in order to qualify for a lump sum payment	Negative
44(2)(b)	Provides that eligibility for a payment under a prescribed scheme will disqualify a person with mesothelioma or a dependant for a payment	Negative
44(2)(c)	Prescribe the connections which a deceased person with diffuse	Negative

	mesothelioma must have had with the United Kingdom in order for their dependant(s) to qualify for compensation	
44(3)(f)	Provides that a lump sum payment under this part cannot be made if a payment of a type prescribed by regulations has been paid	Negative
44(4)(e)	Provide that a payment is to be disregarded for the purposes of paying a lump sum to a mesothelioma sufferer or their dependant in such circumstances as may be prescribed	Negative
44(1)	Prescribe the manner in which, and period for which, a claim for a lump sum payment under clause 40 must be made	Negative
45(2)	Prescribe different periods for different cases, classes of cases or circumstances	Negative
45(3)	Provide that no claim may be made in cases where the prescribed period expired before the commencement of section 41, or would have expired but for a discretionary extension.	Negative
46(2)(a)	Prescribe the manner and period in which an application may be made to the Secretary of State for reconsideration of a determination that a payment should not be made	Negative
46(2)(b)	Prescribe the manner and period in which the Secretary of State may institute a reconsideration of a determination that a payment should not be made without an application	Negative
47(4)(a)	Provide for the manner in which, and the time within which, an appeal may be made to an appeals tribunal	Negative
47(4)(b)	Provide for the procedure to be followed in the event of an appeal to an appeals tribunal being made against a decision by the Secretary of State	Negative
47(4)(c)	Provide for an appeal to an appeals tribunal against a decision by the Secretary of State to be treated as an application for reconsideration of the decision	Negative
51 1A(1)	Provide for the recovery of an amount of a lump sum payment where a compensation payment in consequence of the same disease is made to or in respect of the person to whom or in respect of a lump sum payment has been made or is likely to be made	Negative
51 1A(3)(a)	Provide for the recovery of the amount of a lump sum payment made to or in respect of a dependent of the person to whom or in respect of a lump sum payment has been made or is likely to be made	Negative
51 1A(3)(b)	Provide for certificates in respect of lump sum payments	Negative
51 1A(3)(c)	Make provision enabling the recovery of an amount of a lump sum payment from a compensation payment	Negative
51 1A(3)(d)	Provide for the amount of a lump sum payment made before commencement to be recovered from a compensation payment made after commencement	Negative
51 1A(3)(e)	Apply any provisions of this Bill, with or without modifications	Negative
<b>Part 5</b>		
54(2)	Make provision consequential to the Bill amending , repealing or	Negative

	revoking and provision of any instrument made under an Act before the passing of the Bill	
56(2)	Provide for the 1991 Act, as amended by Schedule 3, to have effect, until the coming into force of section 15, with such modifications as are considered necessary	Negative
56(3)	Provide for sections 6 and 46 of the 1991 Act to have effect with such modifications as the Secretary of State considers expedient in anticipation of section 15 coming into force	Negative
56(7)	Make transitional provisions or savings in connection with the coming into force of any of the provisions of the Bill	Negative
59(2)	Set the day(s) upon which all sections of the Bill except sections 50, 54(7), 56, 57 and 58 are brought into force	Negative
<b>Schedule 4</b>		
5(2) 5A(6)(b)	Define the kinds of agreement which constitute qualifying maintenance arrangements for the point of view of a maintenance calculation where the non-resident parent has other maintenance arrangements	Affirmative in the first instance only
8(2)	Prescribe how to determine how care of a qualifying child is to be shared	Negative
8(3)	Prescribe how to determine how many nights count for the purposes of a shared care calculation	Negative
8(4)	Enable the Commission to make an assumption about shared care for a set period.	Affirmative in the first instance only
9 10(2)(a)	Prescribe the determination of current income in certain circumstances by reference to income in a past period.	Affirmative in the first instance only
9 10(2)(b)	Allow the Commission to estimate income or make assumptions where information is unreliable, insufficient or relates to an atypical period in the life of the non-resident parent in question	Affirmative in the first instance only
<b>Schedule 5</b>		
2(1)	Make regulations around the Commission's ability to require interested parties to choose whether or not to stay in the statutory scheme	Negative
3(2)(a)	Prescribe the time period within which decisions around the choice to stay in the statutory scheme must be made	Negative
3(2)(b)	Provide that a choice to stay in the statutory scheme shall be made by means of an application to the Commission	Negative
3(2)(c)	Prescribe the form and content of an application to the Commission	Negative
5(1)	Prescribe the method by which liability under an existing maintenance calculation or liability shall cease to accrue when a case transfers	Negative
5(2)	Prescribe the method by which liability under an application for a maintenance calculation or liability shall cease to accrue when a case	Negative

	transfers	
6(1)	Make necessary or expedient provision for the purposes of, or in connection with, a decision not to leave the statutory scheme	Negative
6(2)(a)	Prescribe procedures in relation the determination of an application to stay in the statutory scheme	Negative
6(2)(b)	Provide for the application of the 1991 Act in relation to a maintenance calculation made in response to an application to stay in the statutory scheme	Negative
6(2)(c)	Define the circumstances in which liability under such a maintenance calculation is to be subject to a prescribed adjustment	Negative
6(2)(c)	Define the amount of this adjustment	Negative
6(3)	Enable the Commission to treat an outstanding application as withdrawn if none of the interested parties chooses to stay in the statutory scheme	Negative
7	Define the meaning of the term “interested parties” in the context of applications to the Commission	Negative
<b>Schedule 7</b>		
1(6)	Provide for the enforcement in England, Wales and Scotland of a liability order made in Northern Ireland	Negative
1(9)	Provide for a statement in writing, made by or on behalf of a liable person’s employer, that wages have been paid to the liable person to be taken as establishing that these wages have been paid.	Negative
1(12)	Provide for a statement in writing, made by or on behalf of a liable person’s employer, that wages have been paid to the liable person to be taken as establishing that these wages have been paid.	Negative
1(15)(1A)	Define the kinds of employment to which the penalties for unauthorised disclosure of information apply	Negative
1(15)(1C)	Define the kinds of employment to which the penalties for unauthorised disclosure of information apply	Negative
1(26)14(a)	Provide for two or more applications to be treated in certain circumstances , as a single application, and power to define the circumstances in which this would occur	Negative
1(26)14(b)	Provide that in certain circumstances a maintenance calculation made on the application of one person will be replaced by a later maintenance calculation made on the application of that or any other person	Negative
1(29)	Provides that regulations may provide that paragraphs 2(2) and 5A(2) of schedule 7 may have effect as if different amounts were substituted for the amounts set out in these paragraphs.	Affirmative
4(1)	Define the ways in which information supplied to the Secretary of State or Northern Ireland department or a person providing services to either may be used for purposes relating to evaluation or statistical studies	Negative

## APPENDIX 2: EMPLOYMENT BILL [HL]

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### **Memorandum by the Department for Business, Enterprise and Regulatory Reform**

#### **Introduction**

1. This memorandum identifies provisions for delegated legislation in the Employment Bill. It explains the purpose of the delegated powers proposed; describes why the matter is to be dealt with in delegated legislation; and details the procedure proposed for each power and explains why it has been chosen.

#### **Purpose of the Bill**

2. The aim of the Employment Bill is to simplify, clarify and build a stronger enforcement regime in key aspects of employment law. It contains 21 clauses and 1 schedule; the main elements are summarised below in the order they are found in the Bill.

#### *Dispute resolution*

3. The Bill implements the Government's legislative proposals following the independent Gibbons review on dispute resolution in the workplace and public consultation. It provides for repeal of the current statutory dispute resolution procedures and provisions to underpin a package of replacement measures to encourage early/informal resolution. The package would create significant administrative savings for business, estimated at over £170 million per year.

#### *National minimum wage*

4. The Bill introduces a new enforcement framework for the National Minimum Wage (NMW), involving the introduction of a civil penalty for all non-compliant employers, a fairer method of calculating arrears and a strengthening of the criminal investigation and prosecution regime.
5. The Bill enables the Cadet Forces to continue to operate as they currently do by amending the National Minimum Wage Act 1998 to exclude Cadet Force Adult Volunteers from qualifying for the NMW.

#### *Employment agencies*

6. The Bill introduces an improved enforcement framework for employment agency standards, making offences under the Employment Agencies Act each way offences and defining investigative powers.

#### *Trade union membership*

7. The Bill ensures the rights of trade unions to determine their membership, in compliance with the European Court of Human Rights judgment in *Aslef v UK* (such that trade unions can exclude or expel persons in circumstances where their political party membership or activity amounts to unacceptable conduct),

#### **Classification of subordinate legislation**

8. In deciding whether subordinate legislation was appropriate in any particular case the Department considered the issues of precedent, given that a number of

powers are similar to those already available in existing legislation; and the need to ensure flexibility in responding to changing circumstances without requiring primary legislation.

### **Clause-by-clause analysis of delegated powers**

#### ***Dispute resolution***

#### **Clause 3(2) - subsection (6) of new section 207A**

*Power conferred on:* Secretary of State

*Power exercised by:* Order (statutory instrument)

*Parliamentary procedure:* Affirmative resolution

9. Clause 3 inserts new section 207A into the Trade Union and Labour Relations (Consolidation) Act 1992 (c52), and allows employment tribunals to vary compensatory awards where employers or employees unreasonably fail to comply with procedural provisions in a Code of Practice issued under Chapter 3 of the TULR(C)A. This clause replaces section 31 of the Employment Act 2002 which made comparable provisions in respect of the statutory dispute resolution procedures which the current bill repeals.
10. The power in subsection (6) allows the Secretary of State to add or remove a jurisdiction to Schedule A2 to the bill, which lists the jurisdictions covered by this clause. Together, the listed jurisdictions cover the overwhelming majority of tribunal claims. This replicates the current power under section 31(7)(a) of the Employment Act 2002.
11. The affirmative procedure is considered appropriate for these powers which amend the reach of remedies for breach of underlying employment rights.

#### **Clause 4**

*Power conferred on:* n/a

*Power exercised by:* n/a

*Parliamentary procedure:* n/a

12. Clause 4 inserts a new subsection (3AA) into Section 7 of the Employment Tribunals Act 1996 (c17). Section 7(3A) and Section 41 of the Employment Tribunals Act provide that the Secretary of State may, by regulation subject to negative resolution, authorise the circumstances in which employment tribunals can determine cases without a hearing.
13. The new subsection 7(3AA) will restrict the Secretary of State to issuing regulations authorising determination without a hearing to circumstances where either all parties to the proceedings consent to the process or are given the opportunity to request a hearing.

*National minimum wage***Clause 9(1) - new section 19A(6)(a) and (b) and Clause 9(3)**

*Power conferred on:*                      *Secretary of State*

*Power exercised by:*                      *Regulations*

*Parliamentary procedure:*              *Affirmative resolution*

14. Clause 9(1) inserts new sections 19 to 19H into the National Minimum Wage Act 1998 to allow officers appointed to enforce the NMW to issue notices requiring employers who have not complied with the 1998 Act to repay arrears to their workers and to pay a civil penalty for non-compliance. These replace sections 19 to 22F of the 1998 Act which provide for separate notices requiring the repayment of arrears and the payment of penalties.
15. New section 19A sets the civil penalty at 50% of the outstanding arrears, with a minimum penalty of £100 and a maximum penalty of £5,000. Subsection (6) allows the Secretary of State firstly to make regulations to raise or lower the percentage that is applied to the amount of arrears in order to calculate the amount of penalty imposed upon the employer for non-compliance and, secondly, to vary the minimum and maximum penalty that can be imposed.
16. Clause 9(3) amends section 51 of the 1998 Act to apply the affirmative resolution procedure to regulations under new section 19A(6).
17. We consider that powers to amend the amount of the penalty are necessary as we cannot predict exactly the effect of a new civil penalty on non-compliant employers. Experience of the extent of non-compliance and the effectiveness of the new enforcement mechanisms may render it desirable to increase or lower penalties to ensure the effectiveness of the enforcement regime without requiring primary legislation.
18. The affirmative resolution procedure is considered to be appropriate for these powers which could decrease the extent of penalties imposed on employers, as changes may be contentious either from either employer representatives or in the interest of protecting vulnerable workers.

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